

Draft
The Implementation Plan
by
Sexual Harassment Task Force
City and County of San Francisco
January, 1996

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Valerie M. Pinkert, Vice President & Manager, Employee Relations, Bank of America, San Francisco, CA (415) 241-3010. Ms. Pinkert is responsible for BOA's grievance procedures, training and policy regarding sexual harassment. She has trained consultants in how to investigate sexual harassment complaints. She has also conducted sexual harassment investigations herself including senior staff at both the BOA and other private sector industries.

Frances Pinnock, Pinnock & Schectman, 1231 Market Street, 8th Floor Penthouse West, San Francisco, CA 94103 (415) 431-4432. Ms. Pinnock is a plaintiff's attorney handling sexual harassment cases who has experience bringing cases against the city and she sat on expert's panel for the sexual harassment report.

CITY EMPLOYEES

Vicki Clayton, Deputy City Attorney, 1390 Market Street, 5th Floor, San Francisco, CA 94102 (415) 554-4290. Ms. Clayton is the Civil Service's legal advisor and was involved in the drafting of the charter amendments separating the Civil Service Commission from the Department of Human Resources.

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Anne Godfrey, Manager of Operations, Department of Human Resources, 44 Gough Street, San Francisco, CA 94103 (415) 557-4944. Ms. Godfrey has been a consultant in the private sector on issues of sexual harassment and discrimination and has been involved with the City of San Francisco's performance appraisal program.

Judith Klain, Manager of Health Planning and Evaluation, AIDS Office, Department of Public Health, 25 Van Ness Street, San Francisco, CA 94102 (415) 554-2605. Ms. Klain is a past Commission on the Status of Women staff member and was instrumental in the compilation of information for the original sexual harassment report completed in August, 1994. She also has experience working as a woman in the trades.

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Melinda Pengel, Captain, Police Academy, 350 Amber Drive, San Francisco, CA 94131 (415) 695-6900. Captain Pengel is a 20 year member of the San Francisco Police Department. Prior to her recent move to the Academy, Captain Pengel supervised the department's training and investigation of sexual harassment complaints.

Mary Smith, Senior Personnel Officer, Department of Social Services, P.O. 7988, San Francisco, CA 94120 (415) 557-5570. Ms. Smith has worked with the issue of sexual harassment in her work as Senior Personnel Officer.

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INTRODUCTION

The Problem

The social and economic costs of sexual harassment can be tremendous. Victims of sexual harassment suffer psychologically, physically and emotionally. It is well documented that sexual harassment in the workplace results in decreased productivity¹. Victims of sexual harassment report that workplace morale is severely and negatively affected and collegiality is also injured. In addition, the cost of litigation, payment of settlements and court awards can be significant.

City and County employees who contact the Commission on the Status of Women describe being targets of sexual comments, lewd jokes, staring, leering, comments about their anatomy, inappropriate sexual touching, exclusion from work or job advancement because of their gender and even sexual assault. In a study of female and male, blue-collar City and County of San Francisco employees, conducted by Sharon Aurora in 1992, almost 70% of the female respondents and approximately 10% of the male respondents stated that they had experienced sexual harassment on the job.² During fiscal year 1992-93 there were 201 formal complaints and 14 lawsuits filed by female city employees costing \$1,623,548³, the majority of which involved sexual harassment. Sexual harassment complaints by city employees increased 62% between 1988 and 1993 (42 in 1988, 68 in 1993)⁴. Recently the number of complaints has dropped⁵, not because the problem has disappeared but because the employees fear retaliation and have lost faith in the system. The City cannot afford to tolerate sexual harassment in the workplace.

The Sexual Harassment Task Force

A study completed in August, 1994 entitled Sexual Harassment Complaint Procedures in the City and County of San Francisco Government: Recommendations to Improve the Prevention of Sexual Harassment and the Processing of Complaints, by Merrick T. Rossein Associates recommends the appointment of a Task Force to design a plan for improving the

¹ Sexual Harassment Complaint Procedures in the City and County of San Francisco Government: Recommendations to Improve the Prevention of Sexual Harassment and the Processing of Complaints, by Merrick T. Rossein Associates, August, 1994.

² The Pervasiveness of the Sexual Harassment of Women in Blue-Collar Jobs in the City of San Francisco and the Differing Perceptions Between Men and Women as to What Behaviors Actually Constitute Sexual Harassment. A Senior Project Submitted by Sharon Aurora, The University of San Francisco, June 28, 1992.

³ Rossein, p 3.

⁴ Commission on the Status of Women, Statistical Research, January 24, 1994.

⁵ The costs have not dropped, however, due to the increasing cost of litigation.

sexual harassment policies for the City and County of San Francisco. Twenty private sector and City and County employees were appointed members to the Sexual Harassment Task Force in May, 1995. The Commission on the Status of Women agreed to staff the Task Force and Commissioner Caryl Ito was made Chair. This document, created by the Sexual Harassment Task Force includes an **Implementation Plan** for the recommendations made in the 1994 Rossein study.

The Sexual Harassment Task Force divided into three working subcommittees shortly after being appointed. These subcommittees focused on procedures, guidelines and training for the implementation plan. The Procedures Committee made changes to the internal complaint process. The Guidelines Committee devised one standardized, citywide sexual harassment policy and drafted a set of frequently asked questions and answers to provide some direction to all City and County of San Francisco employees. This committee also drafted suggested revisions in the performance evaluation form for supervisors which will assist with sexual harassment prevention. The Training Committee developed a training model and planned the organization and coordination of sexual harassment trainings for all City and County personnel.

The Implementation Plan

The Task Force recognizes and strongly supports the recommendation by Merrick T. Rossein and Associates for ***full centralization of all equal employment opportunity matters under the Department of Human Resources, Equal Employment Opportunity Office***. The complex logistical details involved in implementing full Equal Employment Opportunity centralization however, were beyond the scope of this Task Force focussed on Sexual Harassment. Full centralization will take further work and study by the departments involved. The Commission on the Status of Women would be pleased to continue working on this matter. The following plan for centralization of sexual harassment concerns will serve as a model for the eventual and full centralization of all equal employment opportunity issues.

This Plan implements the centralization of sexual harassment complaints and investigations, provides prevention and training and offers technical assistance and guidance for all City and County of San Francisco personnel. This document also reflects the major objections and concerns which have been expressed with a change in policy and procedures.

Case Study

Can a sexual harassment-free work environment be created within the City and County of San Francisco? Yes. As only one example, we offer a city department which recognized the enormous costs of sexual harassment in the workplace and took concrete steps toward its eradication. In FY93/94, during a three-and-one-half (3 ½) month period of time, nine sexual harassment complaints were filed in this department. Only one complaint was filed during the same amount of time in FY95/96. The significant decline in the number of complaints is the direct result of actions taken by managers and supervisors which set the tone of "zero tolerance" for

sexual harassment.

An interview with department staff revealed the philosophy and actions which successfully managed to change the culture around this issue in a relatively short period of time (two years).

First, the department's top management issued an unequivocal memo in January, 1992 stating the seriousness of sexual harassment and encouraging employees to bring the issue to the attention of management. As reinforcement, the *administration* conducted sexual harassment trainings on a regular basis for the department.

Secondly, management made every effort to respond to sexual harassment complaints immediately upon receipt. The philosophy of the department is that the sooner a complaint is dealt with, the better the chances one has of minimizing its impact in the workplace. Some complaint investigations were begun within minutes of receipt.

Thirdly, department staff delivered swift punishment to offenders. This was a crucial step to setting the tone at the department. In one case, a high-ranking employee was fired for sexual harassment after having worked in the department for many years. Employees saw examples like this and realized that the department takes this issue seriously. The department continued to deliver the maximum penalties allowable for the determined offense, which sent the message to everyone that sexual harassment will not be tolerated and that no one is above the law. This message had the powerful effect of changing the culture of an entire department from one of tolerance to intolerance for sexual harassment, a change which has benefited all workers.

Another department has recently mandated that every employee go through a four-hour training on sexual harassment. These examples show that regular and thorough trainings for all staff, swift and effective sanctions for accused harassers and serious and responsible attitudes by the leadership can significantly reduce sexual harassment in the workplace. By encouraging mutual respect of all city employees, it is the expectation of the Sexual Harassment Task Force that the culture of San Francisco, as a whole, will change and we can all begin to reap the benefits.

SEXUAL HARASSMENT POLICY
for the
CITY AND COUNTY of SAN FRANCISCO

A. Policy: Each city employee has the right to work in an environment free of discrimination, including sexual harassment. Sexual harassment is prohibited by local ordinance as well as state and federal law (the San Francisco Administrative Code, Section 16.9-25, Chapter 6 of the California Fair Employment and Housing Act, and Title VII of the Civil Rights Act of 1964, as amended). Sexual Harassment is unacceptable and will not be tolerated in the workplace. This policy applies to all employees and includes the prohibition of sexual harassment of employees by clients and contractors of the City and County of San Francisco and the general public. It is the policy of the City and County of San Francisco to provide a workplace in which all individuals are treated with respect and dignity. The City and County of San Francisco recognizes that the elimination of sexual harassment in the workplace will create a better work environment, increase productivity, and improve relationships for all employees.

B. Application: This policy applies to all phases of employment, including but not limited to recruitment, testing, hiring, upgrading, promotion or demotion, transfer, layoff, termination, benefits and selection for training.

C. Prevention: In order to create and maintain a sexual harassment-free workplace, the City and County will take all reasonable steps to:

- set an example through its leadership & management that sexual harassment will not be tolerated;
- maintain a centralized Office of Sexual Harassment Prevention within the Department of Human Resources with an emphasis on prevention, alternative resolution and formal investigations;
- train and educate management and public officials as to their responsibility to carry out the policy of the City and County;
- train and educate employees regarding sexual harassment issues and policy;
- provide a centralized internal complaint process in the Office of Sexual Harassment Prevention for the reporting of sexual harassment matters; and
- investigate all formal complaints in a timely manner and take appropriate corrective action up to and including discharge, when warranted.

Conduct Prohibited

A. Definition of sexual harassment: Sexual harassment is defined as any unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature. Sexual harassment occurs when:

- (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or

(2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting said individual; or

(3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

B. Examples of behavior which may constitute sexual harassment include but are not limited to:

- Acts from male to female, female to male and between or among individuals of the same sex which are sexual in nature and unwelcome; sexual harassment may be directed against a particular person, persons or group.
- Verbal harassment which are sexual in nature and unwelcome, e.g., epithets, jokes, comments or slurs, repeated requests for dates which are unwelcome.
- Non-verbal harassment which is sexual in nature and unwelcome, e.g., staring, leering, lewd gestures.
- Physical harassment which is sexual in nature and unwelcome, e.g., assault, sexual advances such as touching, patting or pinching, impeding or blocking movement or any physical interference with normal work or movement;
- Visual forms of harassment which is sexual in nature and unwelcome, e.g., posters or signs, letters, poems, graffiti, faxes, cartoons or drawings, pictures, calendars.

C. Retaliation: Retaliation against any employee or applicant for employment for having made a good faith complaint or report of sexual harassment, or participating or aiding in an investigation of sexual harassment is strictly prohibited. The retaliation will be considered a serious act of misconduct subject to appropriate discipline up to and including discharge.

D. Conflict of Interest: Consensual romantic relationships between a supervisor/manager and a subordinate are *not* prohibited by this policy. They do, however, create a potential conflict of interest. Therefore, any supervisor/manager or public official who has such a relationship, with an employee over whom he or she has any supervisory authority, must report this fact to his or her supervisor.

Complaint Procedure

A. Complaints: Any employee or applicant for employment who:

- believes he or she is the subject of sexual harassment, or
- is aware of a sexually hostile or offensive work environment, or other sexual harassment, or

- believes he or she has been retaliated against for making a good faith complaint or report of sexual harassment, or for participating or aiding in an investigation of sexual harassment

should immediately report the incident to the Office of Sexual Harassment Prevention. Employees may also report any incident to any supervisor or manager, Equal Employment Opportunity Specialist or Human Resources personnel. The formal complaint must be a statement by the employee specifying the facts which support the discriminatory charge.

B. Alternative Resolution: Whenever appropriate, mediation of a complaint is available through Office of Sexual Harassment Prevention. The Office may also provide trainings in sexual harassment, team building, or communication matters.

C. Time line: Complaints of sexual harassment must be filed within *one (1) year* of the alleged discriminatory action.

D. Reporting: Any supervisor, manager, Human Resources personnel or public official

- 1) who receives a complaint about sexual harassment, or
- 2) who is otherwise aware of, or learns of sexual harassment in the workplace

must **immediately** send notification to:

- Office of Sexual Harassment Prevention (to be sent by confidential fax) and,
- Department Head (where the sexual harassment situation arose).

The notification shall be in writing by the person who received the information regarding a sexual harassment situation and will be identified as “confidential”. The notification will contain the name, department, and work phone number of the complainant (if known); the name, department, and work phone number of the person giving the notification, and the date.

Any city official, supervisor or manager who is aware or reasonably should be aware of sexually harassing conduct by another employee (whether or not anyone complains about such harassment) but fails to report that conduct as required in this policy, may be subject to discipline.

E. Investigation: The Office of Sexual Harassment Prevention will, in every incident, make a determination if a formal investigation is required or if further preventive measures or an alternative resolution is possible. The Office of Sexual Harassment Prevention will investigate all formal sexual harassment complaints. The investigation will begin **immediately** and will be completed within ninety (90) calendar days, unless written notification of an extension is required.

F. Confidentiality: To the extent possible, the reporting and investigation of all sexual harassment complaints will be kept confidential. The City and County of San Francisco cannot make an absolute guarantee that the information provided regarding a possible sexual harassment offense will remain completely confidential. The City and County of San Francisco can assure individuals that it will keep the information, including complainant's identity, private to the greatest extent possible, taking into account the rights of the accused.

G. Discipline: Any employee who is found to have committed sexual harassment will be subject to appropriate discipline, up to and including termination. The severity of the disciplinary action shall be commensurate with the circumstances. Any formal investigation which results in a "for cause" finding of sexual harassment will be placed in the offending person's personnel file.

Action Without Formal Complaint

A. Confidential Counseling Services: If an individual prefers to handle the situation himself or herself with the assistance of a trained counselor, he or she may contact the San Francisco City and County Employee Assistance Program, 1360 Mission Street, Fourth Floor, San Francisco, CA 94103 (415-554-9580). *This counseling program offers confidential services including mediation.*

B. Anonymous: An individual may also file an anonymous report (which is not a formal complaint) with the Office of Sexual Harassment Prevention. When the office learns, from whatever source, of sexual harassment (potential or actual), the staff is authorized, **in the absence of a signed complaint**, to take any action deemed appropriate. These actions may include but are not limited to training, mediation, alternative resolution, assessment of workplace environment, team building, communication training, site visits or a full investigation.

C. Technical assistance: In addition the Office of Sexual Harassment Prevention, the Commission on the Status of Women, 25 Van Ness, Suite 130, San Francisco, CA 94102 (415-252-2570) is available to offer technical advice on all City and County policies, assistance with filing a complaint and referrals for complainants, supervisors and managers for additional resources to assist with the prevention and handling of sexual harassment incidents.

Other Complaints

Nothing in this policy is intended to affect the right of any person to make a charge of discrimination at any state or federal agency with jurisdiction over such claims, raise a grievance under a collective bargaining agreement, or consult a private attorney.

State Agency: The Department of Fair Employment and Housing, 30 Van Ness Avenue, San Francisco, CA 94102 (415) 557-2005

Federal Agency: Equal Employment Opportunity Commission, 901 Market Street, Suite 500, San Francisco, CA 94103 (415) 356-5100

PROCEDURES SUMMARY

Office of Sexual Harassment Prevention

The Task Force on Sexual Harassment has designed a plan for a new Office of Sexual Harassment Prevention (OSHP) within the Department of Human Resources.⁶ The creation of this office is part of a cutting-edge trend⁷ which recognizes the unique nature of sexual harassment through the creation of a centralized procedure and a separate sexual harassment office. The creation of the Office of Sexual Harassment Prevention will be authorized by a change in the Administrative Code 16.9-25.

Why have a centralized procedure?

This centralized procedure is needed now because the current San Francisco city policy is not working. There are 66 different departments, each with its own sexual harassment policy and complaint procedures. Each department is currently free to make its own determination as to whom is investigated and how investigations of complaints are completed. Thus, departments currently may handle complaints and conduct investigations with any one (or more) of the following resources:

- 1) Decentralized department⁸ Equal Employment Opportunity staff
- 2) Department human resources staff
- 3) Outside counsel
- 4) Department of Human Resources, Equal Employment Opportunity staff
- 5) City Attorney's staff
- 6) Outside agencies, such as the Federal Equal Employment Opportunity Commission; or the State Department of Fair Employment and Housing.

This variety of options has resulted in a great deal confusion about who handles complaints, different skill level for the various investigators and great misinformation about what to do when a harassing situation arises. This inconsistency also allows for two different individuals, committing the same sexual harassment offense (located in separate departments) to receive different punishments. Additionally, there is no central location for tracking problem employees so that the same individual may cause a problem in one department be transferred and cause the same problem elsewhere. Finally, some sexual harassment trainers are currently misinformed as to

⁶This was one of the recommendations of the consultant, Merrick T. Rossein in the report of August, 1994.

⁷The City of Chicago, with 24,000 employees, set up a similar office in 1993. The number of complaints went from one "for cause" finding in a number of years to almost fifty in less than two years. The University of California at San Francisco has also set up a similar office in early 1993 and has experienced an increase in formal complaints from 7 to 36 in over two years. Additionally, The Universities of California at Santa Cruz and San Diego follow this model. Similarly, Bank of America has a centralized office for investigations of all sexual harassment complaints.

⁸ These Departments include: Dept. of Public Health, Dept. of Public Works, Dept. of Social Services, SF Fire Dept., SF Police Dept., SF Unified School District, Public Utilities Commission, SF Community College.

where to instruct city employees to file complaints with so many different alternatives available. **We need *one* standard policy, *one* uniform procedure and *one* centralized office to eliminate the current checkerboard of internal options.**

The current decentralization of many of the investigative procedures for sexual harassment complaints throughout the city also gives, at minimum, the appearance of a conflict of interest. Right now, departments are often investigating themselves. Current policy also allows for individual departments to choose and implement their own penalties with a variety of results. Centralization of complaints under one unit and one uniform policy will eradicate this inconsistency and the appearance of conflict. This centralization of sexual harassment also follows the approach taken by the recently enacted Charter Reform which moves toward centralized lines of authority. The current revision of the Civil Service Commission employment discrimination rules is also attempting to solve some of this disparity by setting up centralized standards for investigation.

Why have a separate Office of Sexual Harassment Prevention?

The City and County of San Francisco has a long history of giving special attention to sexual harassment. It has an Administrative Code (Sec. 16.9-25) establishing a special reporting method and unique requirements regarding policy distribution and discipline.⁹ The State of California also has laws that single out sexual harassment for special types of attention.¹⁰ Sexual harassment is unique and has some unusual legal requirements, as explained in the following observation.

Unlike cases of racial and religious harassment, where offensive behavior is *assumed* to be unwelcome, the Supreme Court has placed welcomeness at the heart of the sexual harassment inquiry and burdened the victim with proving she neither invited nor welcomed the conduct of which she is complaining.¹¹

Sexual harassment, not unlike domestic violence and rape, is still commonly seen as something a victim asks for if she or he does not loudly and clearly object rather than as offensive conduct that is *perpetrated on* the victim. Many individuals who experience sexual harassment in the workplace are understandably uncomfortable with filing a complaint or seeking assistance in this area because of the very private/personal nature of sexual harassment. Study after study demonstrates¹² that most individuals are loathe to file a formal complaint about sexual harassment.

⁹ In addition, the new proposed Civil Service Commission Rule 3, drafted by the staff of the Department of Human Resources - Equal Employment Opportunity, singles out sexual harassment for special mention in their proposed Rules 3.05, 3.10, 3.11 and in the procedures Rule XVI. This draft is dated May 4, 1995.

¹⁰ CA Government Code #12950 Sexual Harassment; amendment of poster, distribution of information sheet.

¹¹ Fitzgerald, et al, *Why Didn't She Just Report Him? The Psychological and Legal Implications of Women's Responses to Sexual Harassment*, Journal of Social Issues, Spring 1995, Vol 51, p.132., referring to the U.S. Supreme Court *Vinson* decision.

¹² *Ibid.*

Both the personal and legal reasons reflect the need, and the growing trend, to create a separate sexual harassment unit which will house the specialists who have the expertise, the commitment and the authority to support individuals who are experiencing sexual harassment on the job and the supervisor and manager who must enforce the policy and set a "zero-tolerance" standard. This is the direction institutions are moving toward because it allows for a more consistent response and a centralized reporting mechanism to deal with problems and offer solutions uniformly.

An integral part of this office's ability to offer practical solutions to sexual harassment and other management/human resource issues is the skilled attention of two Human Resource Specialists who will be working out of the centralized Office of Sexual Harassment Prevention. These individuals will be knowledgeable in the areas of sexual harassment, communication, team building, diversity, performance appraisals and conflict resolution. These skills will be employed with a philosophy which stresses prevention.

The separate unit, the centralization of complaints, the uniform policy and the use of Human Resource Specialists all send a new and much needed message to employees of the City and County of San Francisco that sexual harassment is a matter to be taken seriously and will no longer be tolerated in any form, whatsoever. In this way, the City and County of San Francisco will be able to count itself among the forward-thinking localities nationwide in its effort to address this unique problem in today's workplace.

Time Lines

The Implementation Plan supports the August, 1994 Rossein report's recommendation to lengthen the filing deadline for complainants to 365 days (equivalent to the state agency, Department of Fair Employment and Housing) from the current thirty (30) day limit. It also limits the length of time to complete an investigation to ninety (90) days from the date of filing unless a written request for an extension is granted. This 90 days is to include the (former) interim steps of reviewing and assigning a case, scheduling an intake, the department's response to a Request for Information (RFI) and the completion of the investigation. These time limits were also recommended by the August, 1994 Rossein study. In contrast, most private sector companies put **no time limits** on when a complaint can be raised because if there is a problem, management wants to know about it and take necessary steps to correct the problem. Because the sooner these problems can be handled the less likely they will develop into costly litigation, the Task Force recommends that an investigation begin immediately upon receiving notice (recommended within 48 hours).

Hearings and Appeals

The Implementation Plan calls for the current Civil Service Review Panel to be replaced by a Hearing Officer, as needed. Currently, the Review Panel consists of three individuals who review all investigations of discrimination. This involves the time of two paid staff (one at Department of

Human Resources and one in the Mayor's Office) and one volunteer. Coordinating these three persons' schedules is the cause for delays. There will be significant time saved for each of these individuals, effectively saving the city money, while also some additional costs incurred for the hearing officer. There are many retired judges or pro-bono lawyers who would like the opportunity to be a Hearing Officer on an occasional basis.

This new plan allows a prompt and impartial review of the facts *when* the Director of Human Resources sees the necessity for a hearing. The administrative hearing will address **all** employment discrimination complaints. If a full administrative hearing is to be held it takes place prior to the Director of Human Resources issuing his or her final determination. The director's final determination can then be appealed to the Civil Service Commission. These changes were also authorized by changes made in the 1993 city charter amendments and will be incorporated into a new proposed Civil Service Rule Three (Previously 1.03F, see Appendix). The changes are summarized below in a *Civil Service Discrimination Rule Comparison Chart* grid.

How will complaints be handled?

Sexual harassment situations can often best be handled by immediate, informal resolution at the most local level. The new Office of Sexual Harassment Prevention will, therefore, provide technical assistance on informal resolutions as needed by the local managers and supervisors, human resource or equal employment opportunity officials involved. **The emphasis will be on prevention, mediation and informal resolution, whenever possible.**

Formal sexual harassment complaints will be investigated solely by the staff of the Office of Sexual Harassment Prevention in a thorough and timely manner by establishing a response procedure which will expedite the processing of the complaint (ie: counselors of the day/week who will receive all reports and/or complaints, initially).

Organization and Responsibilities

The Office of Sexual Harassment Prevention will be created within the Department of Human Resources. A supervisor/investigator will oversee the operations and will work in coordination with the entire Equal Employment Opportunity and Management & Employee Development Division to ensure that all investigations are timely and that training and prevention are utilized whenever possible. This supervisor will also be available and qualified to conduct both investigations and trainings. The office will also have two certified investigators and two human resource specialists/trainers who will have knowledge of team building and communication. There will be 1.5 FTE support personnel.

The Office of Sexual Harassment Prevention will have the following responsibilities:

- the coordination, design, and scheduling of all sexual harassment training citywide
- establishing an emergency response procedure for sexual harassment reports and investigations (ie: counselor of the day/week)

- responding to all reports of sexual harassment with an initial determination of a formal investigation or an informal resolution
- informal resolutions may be handled by OSHP staff or departmental staff (with the consistent advice and technical assistance from OSHP staff) which could include but is not limited to providing mediation, team building seminars, needs assessment, questionnaires and/or sexual harassment trainings
- formal investigations - when complaints include other matters (such as age or race) the division of labor for investigatory purposes will be determined on a case by case basis with Equal Employment Opportunity staff
- follow-up on "formal" complaints.
 - if there is a "for cause" finding, the Office of Sexual Harassment Prevention will be responsible for assuring follow-up with departments on the Director of Human Resources' recommendation for corrective action and with the complainant to see if the harassment has ceased or if there is retaliation.
 - if there is a "no cause" finding, then the Office of Sexual Harassment Prevention will address other issues which may be raised by the investigation, such as poor management or communication issue in coordination with other human resources staff
- coordinating mediation between mutually agreeable parties, when appropriate
- evaluating, organizing, and maintaining the sexual harassment resource library
- tracking all reports of sexual harassment and sending out periodic reports
- depending on workload, all staff will be available to assist Department of Human Resources, Equal Employment Opportunity and Management & Employee Development Division
- centralize, categorize and list sexual harassment resources

What about decentralized Equal Employment Opportunity Offices?

Under the Implementation Plan the current decentralized Equal Employment Opportunity offices will (until total centralization is adopted) have their investigative staff certified by the Department of Human Resources prior to handling any investigations under the revised Civil Service Rule Three (see Appendix for a draft of the certification Standards for Investigators). When there is no conflict of interest, these certified investigators will investigate non-sexual harassment employment complaints. These officers will also participate in the initial training, retraining and continuing education on the new sexual harassment policies for all city departments (see the training section for details). The decentralized units will work with the new Office of Sexual Harassment Prevention to assist in handling informal or alternative resolutions of sexual harassment reports when complaints occur in their respective departments. All formal investigations of sexual harassment will be handled by the new Office of Sexual Harassment Prevention. This will result in some cost savings for the decentralized units.

Outstanding Issues

- The authority to conduct investigations should not be taken from the decentralized Equal Employment Opportunity offices because this eliminates the ability of departments to be directly accountable for problems that exist internally. (*Response - see "Why have a centralized procedure?" above - page 8.*)
- Sexual harassment is a form of employment discrimination and should not be dealt with in a manner which is different from other discrimination complaint procedures. (*Response - see "Why have a separate Office of Sexual Harassment Prevention?" above- page 9.*)
- The filing deadline should not be extended to one year (365 days). It should be kept to 30 days to limit the number of complaints filed and keep evidence fresh in everyone's mind. *Response -see "Time Lines" above- page 10.)*
- Considering current workloads, the investigatory timeline of 90 days is unreasonable and should remain flexible with investigators meeting the goal of completion within 180 days. *Response -see "Time Lines"- above- page 10.)*
- The proposal to abolish the three-member Hearing Panel in favor of a single Hearing Officer is opposed because it will cost more and there will not be an automatic right to a review. (*Response -see "Hearings and Appeals" above- page 10.)*

Civil Service Discrimination Rule Comparison Chart

Activity	Current Rules (1.03F)	Activity	Recommended Revision
Deadline for filing complaint	30 Calendar Days	Deadline for filing complaint	<i>365 calendar days</i>
Review, assign, initiate complaint	no time limit		
Schedule Intake	no time limit	<i>Begin investigation, Intake, & Inform Dept.</i>	<i>Recommended within 48 hours of receiving</i>
Send charge and RFI to dept.	no time limit	Send charge and RFI to dept.	<i>May become part of any investigation at any time</i>
			<i>NOTE: Departments will not be "charged" but rather consulted</i>
Offer informal resolution	10 working days	Offer Informal Resolution	<i>Should not take investigation over 20 days but can be offered at any time</i>
Attempt resolution	no time limit		
Submit resolution to HRD	no time limit		
HRD approves resolution	no time limit		
Dept. Responds to RFI	no time limit (20 business days practice)		
Conduct investigation	no time limit	Conduct Investigation	<i>completed within 90 days (fact finding report, recommendation for hearing or no hearing), exceptions permitted in writing</i>
Complete investigative report	no time limit		
Hearing Panel review of report	no time limit		
Appeal staff report to Panel	10 calendar days		
Panel decision to Parties	5 working days		
Schedule hearing if needed	10 working days		
Challenge to Panel jurisdiction	10 working days		
Issue panel finding	30 calendar days		
Panel finding becomes final	30 calendar days		
HR Director issues determination	not required	HR Director final decision	<i>within 15 calendar days unless hearing requested</i>
		Hearing to be held by Hearing Officer (Bench decisions granted unless otherwise decided)	<i>within 60 days (any party may request postponement for up to 30 days)</i>

		Written Decision	<i>10 calendar days to write decision</i>
Appeal to CSC	30 calendar days	Appeal to CSC	<i>20 calendar days</i>
CSC decision to hear	30 calendar days	Summary Report from DHR Director to CSC (purpose: to initiate calendaring of appeal. To be set for next available timely meeting.)	5 business days
		Final Appeal Decision	CSC decides appeal, informs parties from bench.

Conclusion

Initially the new Office of Sexual Harassment will encourage the filing of more complaints and subsequent increased costs, since individuals will be testing the new system to see if it works. When all the preventive education takes place the new policies will lead to a cultural change in the work environment that encourages more respect for all employees. This will eventually result in a decrease in costs and increase in worker morale.

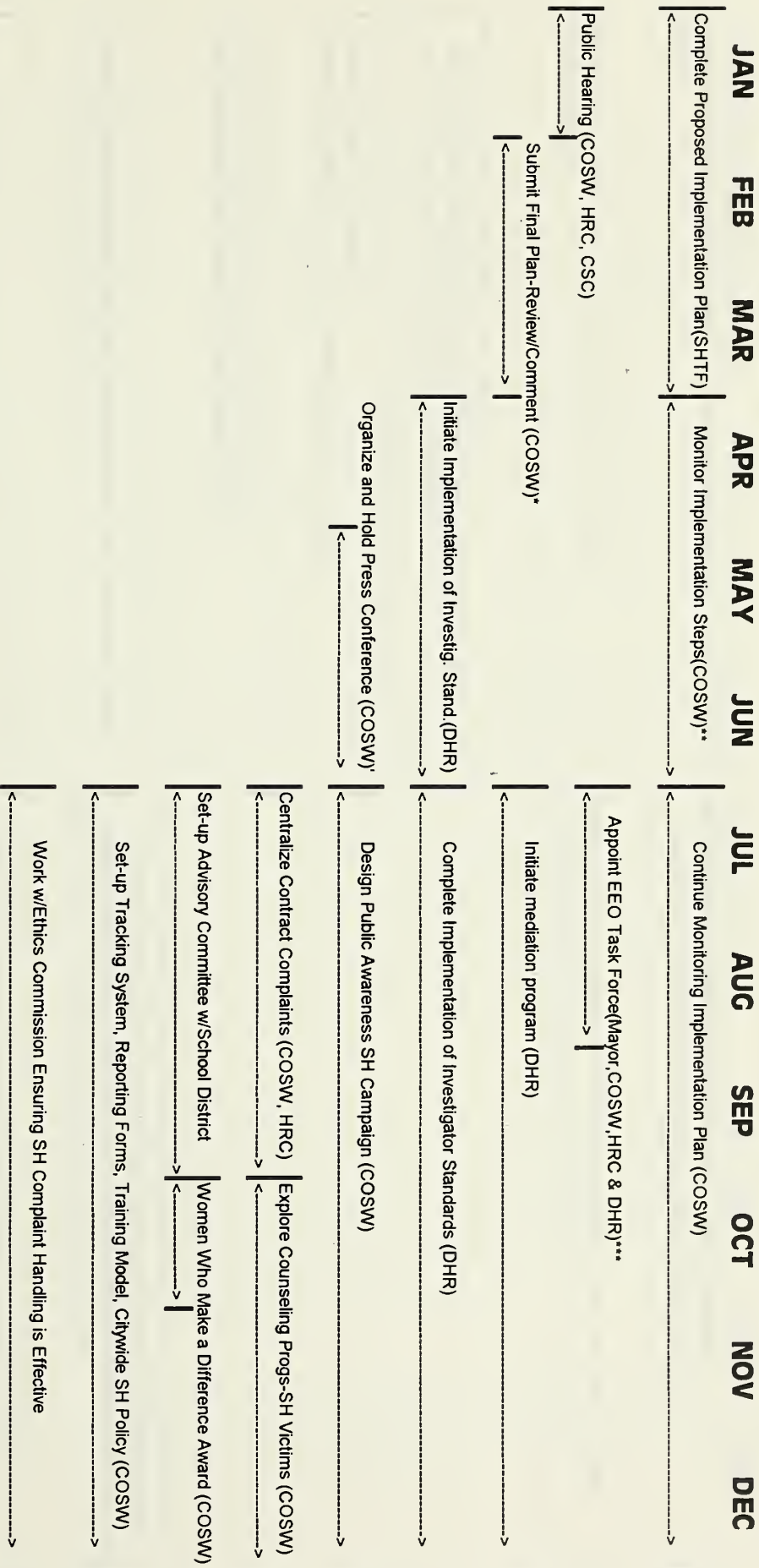
BUDGET & TIMELINE IMPLEMENTATION PLAN

The Sexual Harassment Task Force has been analyzing the timeline and costs of implementing the changes from the sexual harassment study submitted to the Board of Supervisors, in August, 1995, Sexual Harassment Complaint Procedures in the City and County of San Francisco Government: Recommendations to Improve the Prevention of Sexual Harassment and the Processing of Complaints. The following is a proposed timeline and budget for the costs involved in ensuring a sexual harassment-free workplace and a timeline for the eventual centralization of all equal opportunity matters. This proposed four-year plan will be used as a guideline.

KEY:	COSW	Commission on the Status of Women
	HRC	Human Rights Commission
	DHR	Department of Human Resources
	EEO	Equal Employment Opportunity
	MEDD	Management and Employee Development Division
	OSHP	Office of Sexual Harassment Prevention

SEE TIME LINE ON FOLLOWING THREE PAGES

1996 TIMELINE & BUDGET



NOTES:

* An additional cost: employees of COSW who have been staffing the SHTF will continue the monitoring, education, public awareness and counseling programs which have been funded by the General Fund through COSW's budget.

**Both the Sexual Harassment Administrative Code, Sec. 16:9-25 and the COSW Administrative Code (Chapter 33).

***The current SHTF has neither the authority nor the funds to create an implementation plan for total EEO centralization.

1997 TIMELINE & BUDGET

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Continue Monitoring SH Implem. Plan, Pub. Awareness Campaign, School Dist. Advis. Comm. (COSW)						Continue Monitoring SH Implem. Plan, Pub. Awareness Campaign, School Dist. Advis. Comm. (COSW)					
Set up Counseling Program for SH Victims at COSW						Maintenance and Training of Office of Sexual Harassment Prevention Staff Add staff as necessary, supervisor and employee trainings, investigations, reporting					
Centralize Contract Complaint Tracking System (HRC)						Contract w/Hearing Officer on an "As Needed" Basis (DHR-EEO) One 1/2 time data entry support staff for EEO reporting, scheduling, notices					
Set up Office of Sexual Harassment Prevention (DHR)* Initiate supervisory trainings w/COSW, begin investigations and new reporting system						EEO Task Force: Complete Implementation Plan for all EEO Issues Public hearing, submit Final Plan to COSW, Mayor, Board of Supervisors, HRC, DHR & CSC Change administrative code and Civil Service Rules to reflect EEO centralization needs					
Contract w/Hearing Officer on an "As Needed" Basis (DHR-EEO) Explore using retired judges and pro-bono hearing officers											
Complete EEO Task Force work w/Implementation Goal in FY 98/99 (Mayor, COSW, HRC & DHR)											

NOTES:

*Office to be staffed eventually by one coordinator, two support staff, two investigators, and two HR specialists. The hiring of all staff will be staggered over a two year period of time.

1998 TIMELINE & BUDGET

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
------------	------------	------------	------------	------------	------------	------------	------------	------------	------------	------------	------------

Continue Monitoring SH Implementation Plan, Public Awareness Campaign											
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						Implement new centralized EEO office: Fold Office of Sexual Harassment Prevention and hearing officers under this new umbrella office (DHR-EEO)					
--	--	--	--	--	--	---	--	--	--	--	--

Implement SF School Districts curriculum that includes a SH component (COSW & SFUSD)						Continue (COSW) Monitoring SHTF & EEO Implementation, Public Awareness Campaign Implementation of SFUSD curriculum (COSW, SFUSD)*					
--	--	--	--	--	--	---	--	--	--	--	--

Maintenance of Office of Sexual Harassment Prevention Continue trainings, investigations and reporting system; review workload and increase staff by one investigator and one HR specialist, as appropriate											
--	--	--	--	--	--	--	--	--	--	--	--

NOTES:

*Curriculum materials included in SFUSD budget

BUDGET

Creation of Department of Human Resources - Office of Sexual Harassment Prevention

The Office of Sexual Harassment Prevention will be created under the Department of Human Resources and in coordination with the Department of Human Resources Equal Employment Opportunity and Management & Employee Development Divisions. The Rossien study highlighted the importance of ultimately centralizing all equal employment opportunity matters. The Office of Sexual Harassment Prevention is the first step in that direction.

The centralization of sexual harassment issues will ultimately prove cost effective by preventing sexual harassment from occurring, eventually reducing the number of incidents, and thereby decreasing costs associated with litigation and settlement. For example, a recent court case¹³ held *the employer free from liability* for the behavior of its worker since the employer took preventive and immediate corrective action when an incident occurred. Having an adequately staffed and centralized office will enable the City and County of San Francisco to meet its legal obligations to conduct investigations in a timely fashion and to work on preventive education.

Avoiding even one lawsuit is a tremendous savings. A review of recent cases is enlightening. For example, a sexual harassment case settled against the City in late 1994 for \$77,500. Not including City Attorney and investigation time. In a mid-1995 sexual harassment case the City lost and subsequently settled for \$600,000. It is estimated that another \$150,000-\$200,000 was spent on city attorney and staff time defending this case. Another recent high profile case resulted in an almost complete win for the City but cost more than an estimated million dollars in city attorney and investigation time alone to defend (as well as some compensatory expenses and attorney fees for the plaintiff). All of these cases, in fact, cost the city much more in administrative costs, lost employee time and stress-related workers' compensation costs than in the actual numbers reflect. Many additional costs, which are also not reflected in these numbers, such as low morale, are difficult to calculate though their impact is real.

Where will the money come from?

Option I: General Fund

The total budget for the Office of Sexual Harassment Prevention will be \$400,000 when fully operational. This amount may come from the General Fund. This will cover:

- ▶ an office administrator/investigator
- ▶ two full time investigators
- ▶ two human resource specialists

¹³ A very recent California Supreme Court case arising in Santa Clara County held the County was not responsible for the wrongful acts committed by its worker. In that case, the County had its own internal complaint procedure and investigation specifically for sexual harassment complaints. (See San Francisco Chronicle, December 7, 1995)

- ▶ one and a half support staff
- ▶ overhead expenses.

The full staffing of the office may be staggered over a four year period, reducing the costs for the first few years. In addition, the Commission on the Status of Women will be assisting with the implementation and training in the first few years. As compared to even one sexual harassment lawsuit settlement, \$400,000 is a small immediate cost in the interest of significant long-term savings.

There will also be some administrative financial savings derived from the eventual complete centralization of all Equal Employment Opportunity matters in the Department of Human Resources. This savings in personnel time and resources can be put toward the expansion and support of other human resource concerns (ie: additional trainings, additional Human Resource staff members.) This efficient use of scarce resources will reflect the commitment of the City and County of San Francisco to its most valuable commodity - its personnel.

Option II: Per Employee Assessment

The annual \$400,000 costs (beginning fully in 1998) to establish the Office of Sexual Harassment Prevention could also be funded from existing expenditures. For example, each city department could be assessed a "per employee" fee that would cover the necessary funds for the fiscal years '96 - '99. Some departments currently have agreements with the department of Human Resources wherein the department pays Department Human Resources a "per-employee" rate in exchange for technical support/assistance and a variety of trainings. This program could be expanded to include more departments. For example, an assessment of \$25.00 per employee would yield approximately \$500,000. As most departments have money in their current budgets for trainings, the Task Force proposes that a partial allocation of this training line-item be work-ordered to the Office of Sexual Harassment Prevention to cover necessary costs.

How will new sexual harassment trainings be paid for?

During the initial training phase (year one and year two) when massive retraining on the new sexual harassment policies will take place, an estimation of two additional full-time people (in addition to the three new staff of the Office of Sexual Harassment Prevention Unit) will be needed to train all city employees. Each of the large city departments¹⁴ will contribute personnel to assist the Office of Sexual Harassment Prevention¹⁵ by contributing their staff's time up to two months (one month a year). During these two months, personnel on the Training Team will report only to the Office of Sexual Harassment Prevention and will be scheduled to conduct sexual harassment trainings to employees and/or supervisors throughout the city.

¹⁴ These Departments include: Dept. Public Health, Dept. Public Works, Dept. Social Service, SF Fire Dept., SF Police Dept., SF Unified School District, Public Utilities Commission, SF Community College.

¹⁵ Commission on the Status of Women will also assist with the initial trainings.

If any of the selected departments are unwilling to donate the selected personnel for the designated two month periods of time, these departments will be required to contribute the financial equivalent (ie: \$10,000) toward the completion of initial training period. In this case, a temporary contract person will be hired to conduct trainings for the designated two month period and will be paid for by the financial contribution (work order) of the department.

GUIDELINES SUMMARY

The primary areas sought to be addressed by the Guidelines Committee are in the definition of sexual harassment (in all its subtleties), what individuals can do to prevent harassment in the workplace, what a city worker can do if she or he is harassed or otherwise witnesses harassment, how to identify sexual harassment and how to hold people accountable for this harassment. The Guidelines Committee considered all of these questions and concerns and focused its time and energy on the creation of practical, user-friendly management and employee tools to address them. The original Rossein Report of August, 1994 focused on the need for increased consistency of sexual harassment policy, increased equity in distributing punishment and sanctions, increased guidance for all city employees regarding interpretation of policy and a subsequent decrease in the city's liability. This committee used these recommendations to create three (3) primary tools.

Tools

A. Guidelines: The Guidelines Committee has developed a Guidelines Handbook to address the needs of managers and non-managers regarding prevention of sexual harassment, the interpretation of the new sexual harassment policy and the consistency of its application throughout many city departments. This handbook has three sections, one for managers, one for non-managers and one for all employees. Each of the sections addresses the respective responsibilities and concerns by posing frequently asked questions and providing very specific, policy-based answers.

B. Tracking: To assist public officials with recognizing problem areas, the Guidelines Committee has designed a Sexual Harassment Tracking System which will catalog facts about all sexual harassment reports and complaints filed throughout the city; formal and informal. This tracking system has been designed with specific attention to the privacy of the involved individuals and will have limited access by the Office of Sexual Harassment Prevention staff. It will also be used to generate periodic reports on sexual harassment to be monitored and to inform action when problem divisions become apparent.

Currently no adequate systems exist for tracking sexual harassment complaints, reports and problematic employees (though Commission on the Status of Women receives reports, it never gets complete information on offenders or complainants). Because sexual harassment is often a repeated offense, it is essential that attention be given to keeping records of all complaints and resolutions, and ensuring that settlements and reports of incidents are kept and information made available to management personnel with a specific need to know¹⁶ through this process. This will

¹⁶ Information will be given to management personnel who have a legitimate business need to know. For example, any time a transfer or promotion is being considered, management will need to have the Sexual Harassment Office staff check the "for cause" records to ensure that harassers are not promoted or transferred without consideration of their employment history.

give the City a better understanding of where the problems exist and will allow for citywide systematic analysis. One half-time support staff (.5 FTE) will be devoted to compiling this information and sending out reports.

This tracking system will also ensure that “for cause” findings are both in the harassers personnel file and in a centralized location. The use of this tool will ensure the consideration of specific sexual harassment findings, which have been determined against an individual, be considered before the final employment decisions are made. It will be useful because now there will be a system to check the specific employee’s employment history as it relates to sexual harassment.

C. Performance Appraisal: Accountability has been increased by suggested improvements made to the current Employee Performance Appraisal Forms. It has been noted that occasionally employees had favorable performance appraisals even with a history of sexual harassment offenses in the workplace. This inconsistency and lack of accountability promote the belief that the city and its departments do not take sexual harassment seriously and that there is not a system to insure otherwise. The Guidelines Committee has made some simple, straight-forward suggested additions to the appraisal forms which will, necessarily, increase accountability if they are properly implemented.

Sexual Harassment Guideline Questions

Employee Guidelines: Questions and Answers.¹⁷

Most Frequently Asked Questions

- What is sexual harassment?
- Why is a sexual harassment policy necessary?
- What are some common myths about sexual harassment?
- What does the law say about sexual harassment?
- What is third-party and sex-based harassment?
- What are the parameters of the workplace?

Employee Section

- How do I know if I am being sexually harassed at work?
- Can a man be sexually harassed at work, too?
- What are my options if I want to file a sexual harassment complaint?
- What if I do not want to file a formal complaint about sexual harassment but do want help?

¹⁷ The complete answers are still being reviewed as this goes to print for the January 18th, 1996 public hearing date.

- What happens when I file a report of sexual harassment?
- If I file a complaint, everyone at work will know and I don't want to deal with that. What can I do?
- I am a woman/man working in a non-traditional job...what should I be particularly aware of?
- Can I date someone from work?
- If I am asked out on a date and I don't want to go, how do I say "no" without hurting his or her feelings?
- I am not sure if she really means maybe or if she really means no. What am I supposed to do?
- What if the comment was made as a joke and not meant to be offensive?
- Can I compliment someone?
- If I tell one sexual joke, does that mean that I will be sued (or my department/company will be sued?)
- Is all harassment illegal?
- What is prohibited retaliation?
- As an employee, what is my personal potential liability in this area?

Employer Section

- Can consensual relations between a supervisor and his/her subordinate be considered sexual harassment?
- What can I do to prevent sexual harassment in my workplace?
- What should I do when I observe or suspect sexual harassment?
- Can or should I protect the privacy of the complainant and/or alleged harasser?
- What records should I keep?
- What are possible disciplinary actions I can take against the harasser?
- What should I do to help the harassed employee?
- What should I do if an employee is being sexually harassed by the public, clients, or vendors?
- What resources exist to deal with sexual harassment?
- What should I, as a high-level manager/director do to a lower-level manager who failed to take appropriate preventive or corrective action?

Sexual Harassment Information Tracking System

The following information describes how sexual harassment complaint information will be centrally tracked. This document will be incorporated into City and County of San Francisco, The Sexual Harassment Law (Administrative Code, 16.9-25 see Appendix.)

A. In Sexual Harassment complaints: The Office of Sexual Harassment Prevention will maintain records of all reports and complaints of sexual harassment. Two types of files will be maintained:

1) Formal Complaint File

A formal complaint file will be maintained by the Office of Sexual Harassment Prevention. This file will contain: the name of the complainant, the department involved, complainant's title/classification, gender, ethnicity, work location, basis of complaint, the name of the alleged party or parties involved, those parties' gender, ethnicity, title/classification, work location, the hours spent on resolving the complaint, the status of the complaints that are pending, resolution (if any), and departmental action taken, all formal review documents, such as the complaint form, the investigation report, any record of appeal, the result of the appeal, and a record of correspondence notifying the complainant, the department involved and the alleged harasser of actions taken, recommendations and the progress of the complaint. This information will be marked "confidential".

2) Report Files

Files will be maintained by the Office of Sexual Harassment Prevention on all reports of sexual harassment, whether they result in a formal investigation or not. These files will be maintained by the department and section involved and will include a summary of the report and the resolution of the problem, including any education/training the individuals or other department personnel received as a result of the report. These files will be marked "confidential."

B. Access to Records. The Office of Sexual Harassment Prevention records are considered "confidential" for purposes of access and will be maintained in a secure location. Other City and County officials may have access if the disclosure is relevant and necessary in the ordinary course of the performance of their official duties and is related to the purpose for which the information was acquired. Access may also be given in response to a subpoena, court order or other compulsory legal processes. Before disclosure, The Office of Sexual Harassment Prevention should reasonably attempt to notify the individual to whom the record pertains, if the notification is not prohibited by law.

C. Promotion/Transfer Tracking: The confidential records will also keep a separate listing for all "for cause" sexual harassment complaints. A copy of any "for cause" shall also be placed in the accused's personnel file. The personnel file must be reviewed by the Appointing Officer to aid in decisions regarding promotions, transfers or hiring.

D. Records Retention: All the Office of Sexual Harassment Prevention files will be retained until five years after departure of the accused; provided there has been no further report or complaint concerning the conduct of the alleged harasser for five (5) continuous years, from the date of the last report or complaint, the file will be destroyed.

E. Commission on the Status of Women: On a quarterly basis, the following sexual harassment complaint information shall be given to the Commission on the Status of Women: the department involved, complainant's title/classification, gender, ethnicity, work location, basis of complaint, the parties' gender, ethnicity, title/classification, work location, the hours spent on resolving the complaint by all relevant employees, the status of the complaints that are pending, resolution (if any), and departmental action taken, without identifying names of any of the parties.

F. Annual Reports: The Human Resources Director shall report annually to the Mayor, the Board of Supervisors, the Human Rights Commission, and the Commission on the Status of Women on the number of claims of sexual harassment filed, including information on number of claims pending and the departments in which claims have been filed. (Civil Service Commission)

Outstanding Issues

- Sexual harassment reports should not be required on a quarterly basis. These reports should be required only on an annual basis. *(Response - This information will be tracked in a data basis which will be easy to print out period reports since they will all be in one location rather than each separate department)*
- Information should be tracked by the name of the complainant and/or department charged but not the name of the individuals named in complaints. *(Response - Under the new database filing system information can be tracked by any of the fields listed.)*

Changes to Performance Appraisal

In the past few years, the Civil Service Commission revised its Performance Appraisal Procedures and drafted a Performance Appraisal Guide and Management Performance Appraisal Workbook. The two documents consist of instructions for conducting a performance appraisal with managers and a form for the evaluation. To ensure future accountability in this area, a revision of the Performance Appraisal Guide and Management Performance Appraisal Workbook is necessary. The following language will need to be substituted:

Use of Human Resources: (Performance Appraisal Guide P. 14)

A. Management Leadership and Motivation:

How managers lead and motivate their employees is at the heart of their performance as part of your management team. If openings occurred, did this individual select the best candidates available? Did he or she understand and support Affirmative Action Guidelines in recruiting and selecting candidates? How much development has this manager given to his or her employees, in terms of training and delegation of challenging assignments? When discipline problems arise, does this manager step up to them right away? Or does he or she avoid dealing with them? How is the working environment in the manager's work group? Has he or she provided support and leadership to build a cohesive team? Has he or she maintained an environment free of discrimination? Has this manager demonstrated support for Equal Employment Opportunity objectives in some of the following ways? Discussing City Department Equal Employment Opportunity policy with employees in a positive manner; posting materials and distributing information about Equal Employment Opportunity as appropriate; encouraging employees to respect and value each other's diverse cultures; taking steps to resolve any conflicts that occur between employees around issues of diversity?

B. Sexual Harassment:

Does he or she have a "zero tolerance" standard of sexual harassment? Has he or she made sure that all employees in his or her area of responsibility have read, understand and have implemented the City's policy on sexual harassment? Does he or she report all known incidents of sexual harassment to the Office of Sexual Harassment Prevention, and to the Department Head? Does he or she take all complaints of sexual harassment seriously? Has he or she encouraged his or her employees to feel comfortable about reporting incidents of sexual harassment? Has she or he set a good example in treating all employees with respect? Has he or she ensured that all personnel decisions are made in accordance with the sexual harassment policy? Has he or she been implementing immediate and appropriate corrective action when warranted? Has he or she kept information about any ongoing investigations in confidence? Has he or she refrained from retaliation, and ensured that employees do not retaliate against complainants?

Use of Human Resources:(Management Performance Appraisal Workbook [Revised 05/01/92]
page 3)

- Recruits and selects well-qualified candidates; promotes Equal Employment Opportunity and Affirmative Action
- Provides coaching and development, training and promotional opportunities
- Addresses discipline problems in a timely and effective manner
- Provides a positive working environment
- Demonstrates balance and objectivity in personnel decisions
- *Insures a sexual harassment-free work environment, sets a "zero-tolerance" standard*

TRAINING SUMMARY

The Rossein Study¹⁸ stated that:

the single most effective way to prevent sexual harassment in the workplace is to provide all workers, from the leaders of organizations through entry-level employees, with effective training. Training is the only way to provide the information that employers and workers need to understand the problem including overcoming myths, stereotypes and personal attitudes about sexual harassment; learning guidelines for appropriate workplace conduct; communicating the City's commitment to the elimination of sexual harassment; and explaining the sanctions that will be imposed for acts of harassment.

Some departments have been rigorously attempting to meet this goal (for instance, two departments are currently giving training to all their staff). Because the City will be implementing new policies and procedures in areas of sexual harassment, the entire workforce will need to be trained or retrained in these new policies. This training on the new sexual harassment policy is *required* for all city employees.

Currently, sexual harassment trainings are conducted by the Department of Human Resources' Management and Development Division, local department's Equal Employment Opportunity and Human Resources staff, as well as hired, private consultants. As a result, there are inconsistencies in the message which is relayed to city employees about city policies and employees' options and responsibilities. This new Office of Sexual Harassment Prevention is responsible for developing a model training program in addition to scheduling and coordinating citywide trainings for all employees on the new sexual harassment policies. This program will require the assistance of a full-time support staff.

Investigator Training

A thorough and unbiased investigation of a sexual harassment complaint is central to success of any sexual harassment procedure and has implications for the success or failure of the overall policy. The Task Force supports the efforts of the Department of Human Resources to develop uniform standards for investigators of Equal Employment Opportunity matters. As stated by Littler, Mendelson, Fastiff, Tichy and Mathiason, one of San Francisco's leading management-side law firms, a complete investigation has significant implications regarding litigation, also.

The duty of an employer to conduct an independent investigation of various workplace complaints and incidents (not just sexual harassment complaints) is becoming more and more important. The quality and scope of the investigation may be the single most important factor in avoiding later litigation....¹⁹

¹⁸ Rossein, p. 35.

¹⁹ Conducting Employee Investigations: Legal Parameters and Practical Suggestions, Littler, Mendelson, Fastiff, Tichy & Mathiason, 1995.

Added to this already high investigatory burden are the uniquely difficult issues sexual harassment raises about sexuality, personal relationships and the abuse of power. These all required specialized training for investigators in sexual harassment.

What trainings will be conducted?

The implementation plan for the new sexual harassment policy will occur in two phases. Phase I will last 24 months and will be an "initial phase" training period during which every city employee will receive a *minimum* of two hours of sexual harassment training incorporating the new policy and procedures and the core content listed below. There will be two versions of this initial phase of training: one for employees and one for supervisor/managers²⁰. (For those employees who have recently received sexual harassment training, an abbreviated catch up training session will be developed to present the new sexual harassment policy). All supervisors and managers, who are held to a stricter legal accountability will be trained in Phase I. Phase II will be used to train all employees, new employees and new supervisors and managers. Phase II will extend into the future and will include regularly scheduled Sexual Harassment trainings for new city employees (three hours), new managers (four hours) and "spot" Sexual Harassment training wherever necessary and upon request.

Who will do Sexual Harassment trainings?

Twelve individuals will be identified from current department Equal Employment Opportunity divisions and human resources personnel to assist with and deliver sexual harassment trainings throughout the city during Phase I. This group will be called the Satellite Training Team (SATT) and will assist in the initial training of all city employees regarding the new sexual harassment policy and procedures. The SATT will also be called upon to train sexual harassment trainers in their respective "home" departments and to conduct sexual harassment trainings in the future for new city employees, new supervisors and a continuing education program for all employees as well as "spot" sexual harassment trainings, as necessary. Coordination and scheduling of the SATT will be the responsibility of the Office Sexual Harassment Prevention. Department Heads will cooperate to see that all employees receive this training.

The larger departments that have decentralized Equal Employment Opportunity units²¹ and Human Resources staff will be directed to lend their identified SATT members to the Office of Sexual Harassment Prevention, approximately one month per year for two years and then on an on-call basis as coordinated by the Office of Sexual Harassment Prevention. Consideration will be

²⁰ This includes department heads, directors and high level appointees all of whom will need to be trained in the new policies.

²¹ These Departments include: Dept of Public Health, Dept of Public Works, Dept of Social Services, SF Fire Dept, SF Police Dept, SF Unified School District, Public Utilities Commission and SF Community College.

given to equity and fairness in scheduling by the Unit Coordinator. Each SATT member will have available a list of resources developed by the Task Force to assist with “spot” trainings.

What model will the trainings follow?

Included in all trainings will be a core content for all employees and a specialized core content for managers who have additional responsibilities. A recommendation for this model has been provided by the Training Committee of the Sexual Harassment Task Force and is in the Appendix.

The Office of Sexual Harassment Prevention will develop a more detailed model for all sexual harassment trainings, using current training materials as a basis for update, revision and improvement. An abbreviated version of the model will be used for Phase I trainings while the full-length model will be used for Phase II trainings.

What will be the training responsibilities of the Office of Sexual Harassment Prevention?

The Office of Sexual Harassment Prevention will, in coordination with a Commission on the Status of Women representative and other Manager and Employee Development Division staff experts:

- Develop a completed model for sexual harassment training program to include the new sexual harassment policies and procedures. Multiple versions are to be developed.
-Phase I, one for non-managers, one for managers/supervisors and one for all city employees who *have* recently received Sexual Harassment training. -Phase II, revise the "core" sexual harassment training program borrowing the most successful elements of the current Department of Human Resources-Management Employee Development Division and departmental Equal Employment Opportunity unit trainings which already exist for sexual harassment. This new "core" program is estimated at three hours for employees and four hours for supervisors and managers and will incorporate the new sexual harassment policy for the city and is expected to be the model minimum curriculum for every sexual harassment training for the city;
- Identify twelve (12) city employees who will become part of the Satellite Training Team;
- Design a train-the-trainer program to be delivered to the SATT and other training staff;
- Design and implement an evaluation tool for initial sexual harassment training and;
- Design a process for monitoring sexual harassment trainings;
- Coordinate and supervise the scheduling of classes for staff of all departments to receive the new Sexual Harassment training;
- Provide new employee and new supervisory training in sexual harassment on an ongoing basis.

COMMISSION ON THE STATUS OF WOMEN

What will the Commission on the Status of Women (COSW) do in the area of Sexual Harassment?

The Commission on the Status of Women has been the driving force behind the work of the study on sexual harassment and the work of the Task Force. Its role has always been one of advocacy on behalf of women throughout San Francisco and specifically of female employees in the City and County of San Francisco. COSW will maintain its advocacy role and therefore will not be directly involved in any investigations of complaints.

Monitoring

The Commission on the Status of Women's primary role will continue to monitor the implementation of all the recommendations outlined in this plan. Specifically, the Commission on the Status of Women will continue to monitor the investigations, both formal and informal, and all training in the area of sexual harassment. The Commission on the Status of Women staff will monitor the implementation of the Office of Sexual Harassment Prevention, investigations, informal resolutions, mediation programs and the tracking system. The Commission on the Status of Women will follow all reports of sexual harassment to prevent the escalation of problems as they arise.

Advocacy

The Commission on the Status of Women will continue to advise individual complainants (male and female) as to their rights and obligations when faced with a sexual harassment problem. The advice might contain various avenues for redress as well as possible solutions to the problem. The Commission on the Status of Women staff is available to assist with filing complaint forms or advise on alternative solutions.

Training

The Commission on the Status of Women will be part of the initial phase of the sexual harassment trainings which will consist of designing the training model, train-the-trainer model and revising the core curriculum. Commission on the Status of Women representatives will be available to assist with the initial phase of the training to all departments. The Commission on the Status of Women will also make its training resources available to the members of the private sector, specifically those in the non-for-profit sector who are in dire need of assistance.

Technical Assistance

Commission on the Status of Women staff will continue to give technical assistance to managers, supervisors, human resources staff, educators and others in all phases of a sexual harassment

prevention and solutions. The Commission on the Status of Women will act as an additional resource of city managers and supervisors in prevention to sexual harassment problems.

Public Education

The Commission on the Status of Women will continue to work with SF Unified School District to develop and implement a core curriculum for all school age children that will teach basic issues of respect and how to study in a sexual harassment-free environment. The Commission on the Status of Women will continue to give presentations on sexual harassment to the public.

Public Awareness Campaign

Each year, the Commission on the Status of Women will initiate a public awareness campaign to keep the issue of sexual harassment alive in the public mind as all work standards continue to evolve in our changing society.

Counseling

The Commission on the Status of Women will continue to work with employee assistance programs, health insurers and counselors to establish more avenues of referrals and support groups for victims of sexual harassment.

Resources & Materials

The Commission on the Status of Women staff will keep a record of sexual harassment resources and make this information available to the public through access to Internet information services. The Commission on the Status of Women will continue to distribute its sexual harassment free booklet, update (as necessary) and translate into different languages.

Work with other agencies & Equal Employment Task Force

The Commission on the Status of Women will assist and work with the new EEO Task Force to look at the complete centralization of all equal employment opportunity matters. COSW will also continue to meet with other agencies that are involved with the monitoring and investigation of sexual harassment, such as the Human Rights Commission and Ethics Commission, to develop policies for elected officials and a centralized complaint tracking system for City and County of San Francisco contractors for a sexual harassment free work environment. and to

Outstanding Issues

- If the Office of Sexual Harassment Prevention is formed, it should be located within the office of Commission on the Status of Women. Investigations, trainings and monitoring should all be coordinated from the Commission on the Status of Women office. *(Response - It would be difficult for COSW to maintain its advocacy role on behalf of women and*

investigate all allegations of sexual harassment that are made primarily by women against men. This would create, at least, the appearance of a conflict of interest, which is one of the things we are attempting to correct.)

APPENDIX

RECOMMEND CHANGES TO DRAFT DATED 5/4/95

PROPOSED NEW CIVIL SERVICE COMMISSION RULE 3: EQUAL EMPLOYMENT OPPORTUNITY

If only one small type font it indicates no change - if changes were recommended both the new draft (regular type font) and the 5/4/95 draft (small type font) are included.

Section 3.01 Equal Employment Opportunity Policy

It is the policy of the Civil Service Commission that all persons shall have equal opportunity in employment; (that selection of persons to positions in the City and County shall be made on the basis of merit). Vigorous enforcement of the laws against discrimination shall be carried out at every level of each department. Toward that end, all persons, regardless of race, religion, sex, national origin, ethnicity, age, disability, medical condition (cancer-related), political affiliation, sexual orientation, gender identity, ancestry, marital status, color, or other non-merit factors shall have equal access to employment and all terms, conditions, and privileges of employment within the City and County.

Section 3.02. Affirmative Action Policy

It is the policy of the Civil Service Commission to maintain an affirmative action program to eradicate the effects of past discrimination and to achieve a qualified workforce that reflects the labor force availability of minorities and women in San Francisco.

Section 3.03. Affirmative Action Plan Requirement

As required by the San Francisco Administrative Code, Section 16.9-24, each department shall annually prepare an affirmative action plan for submission to the Human Rights Commission, the Commission on the Status of Women, and the Civil Service Commission for approval. The Department of Human Resources shall annually prepare an analysis of the workforce and a citywide affirmative action plan. (*Vickie Clayton has asked Deputy City Attorney Mara Rosales to review the proposed changes to the Civil Service Rules and advise the Rules Committee regarding any anticipated problems or proposed changes as they relate to Affirmative Action.*)

Section 3.04. Language Diversity Policy

It is the policy of the Civil Service Commission that an employee's use of a language other than English is not only an asset in the provision of public services but, with few exceptions, is a legally protected right.

SECTION 3.05 PREVENTION OF SEXUAL HARASSMENT POLICY

It is the policy of the Civil Service Commission, as provided by Section 16.9-25 of the San Francisco Administrative Code, that sexual harassment of city employees and applicants for employment is prohibited *and will not be tolerated*.

Section 3.05. Prevention of Sexual Harassment Policy

It is the policy of the Civil Service Commission, as provided by Section 16.9-25 of the San Francisco Administrative Code, that sexual harassment of City employees and applicants for employment is prohibited.

Section 3.06. Prohibition of Slurs Policy

It is the policy of the City and County of San Francisco that each official, employee, and agent acting in official capacity, will treat all persons equally and respectfully, and will refrain from the willful or negligent use of slurs against any person on the basis of race, religion, sex, national origin, ethnicity, age, disability, medical condition (cancer-related), political affiliation, sexual orientation, gender identity, ancestry, marital status, or color.

Section 3.07. Employment of Persons with Disabilities Policy

In accordance with the Americans with Disabilities Act (ADA), it is the policy of the Civil Service Commission to provide equal access for individuals with disabilities in all areas of employment. No disabled person shall be denied employment or any other term, condition, or privilege of employment based upon disability or the need for a reasonable accommodation, so long as the accommodation does not result in an undue hardship on the operations of the department or the City and County of San Francisco.

Section 3.08. Prohibition of Nepotism and Favoritism Policy

(City Attorney requested to advise on proposed language.) It is the policy of the Civil Service Commission that selection of persons to occupy positions covered by the civil service merit system of the City and County of San Francisco shall be determined by appropriate selection procedures without regard to domestic or familial relationships, friendship, partiality, preferential bias, or factors other than merit and fitness.

Section 3.09. Prohibition of Retaliation Policy

It shall be a violation of this rule to discriminate against, retaliate against, or harass any employee or applicant because such employee or applicant has complained of or opposed any discriminatory practice prohibited under this rule or has made a complaint, testified, supplied evidence, assisted, or participated in any manner in any investigation, proceeding, or hearing under this rule.

Section 3.10. Responsibility and Authority

The Civil Service Commission, through this Rule, directs that the Human Resources Director shall have overall responsibility for the administration and implementation of this Rule. The Human Resources Director shall develop standardized procedures for investigating and resolving complaints of employment discrimination and sexual harassment which shall be submitted to and approved by the Civil Service Commission and thereafter incorporated into this Rule as if fully set forth. The decision of the Human Resources Director resolving such complaints of discrimination shall be enforced by every employee and officer unless the decision is appealed to the Civil Service Commission and reversed.

(formerly - SECTION 3.11 PROCEDURES. Now to be found within Section 3.10 Responsibility and Authority)

A. Subject to approval by the Civil Service Commission, the Human Resources Director shall develop standardized procedures for investigating and resolving complaints of employment discrimination, sexual harassment, and prohibited nepotism and favoritism

B. Such procedures shall provide that the decision *and recommendation* of the Human Resources Director shall be enforced by every employee and affirm and shall further provide that the Human Resources Director's decision is appealable to the Civil Service Commission within 20 business days of postmark date.

B. Such procedures shall provide that the decision of the Human Resources Director shall be enforced by every employee and affirm and shall further provide that the Human Resources Director's decision is appealable to the Civil Service Commission within 10 / 30 business days of postmark date. (*Committee to decide whether to use 10 or 30 days; using 10 days will require that the Procedures be changed while 30 days will require that the Rule be changed*).

C. Such procedures and any amendments to the procedures shall be subject to the approval of the Civil Service Commission and when so approved shall be deemed as included in this Rule.

RECOMMENDED CHANGES TO DRAFT DATED 5/4/95

PROCEDURES FOR THE INVESTIGATION AND RESOLUTION OF EMPLOYMENT DISCRIMINATION COMPLAINTS.

I. AUTHORITY

Under the authority granted to the Civil Service Commission contained in Charter Section 3.661, the Civil Service Commission hereby prescribes and adopts these procedures which are incorporated into its Rules thereby having the force and effect of law.

II. PURPOSE

The purpose of proceedings under this section is to expedite the resolution of employee complaints so as to ensure that complaints are resolved as effectively as possible and to provide an orderly process for the investigation and resolution of charges of discrimination as defined herein, and to provide an appropriate remedy for the complainant where a determination is made that discrimination prohibited by this rule has occurred.

III. Responsibility

The Human Resources Director is responsible for implementing and making effective the provisions of these procedures and by establishing such administrative controls as may be necessary.

The Human Resources Director *is responsible* for the final disposition of each complaint of employment discrimination, including any recommended corrective action, unless it is appealed to the Civil Service Commission.

The Human Resources Director shall retain authority for the final disposition of each complaint of employment discrimination unless it is appealed to the Civil Service Commission.

IV. DEFINITIONS

A. Basis for Discrimination Complaints

Need Definition of "Basis"

Discrimination complaints submitted for investigation must be based on one or more of the following: race, religion, sex, national origin, ethnicity, age, disability, political affiliation, sexual orientation, gender identity,

ancestry, marital status, color, or medical condition (cancer related). A complaint may also be filed on the basis of retaliation for making complaint, or for participating in the investigation of a complaint of employment discrimination, *or based on allegations of otherwise prohibited nepotism and favoritism in employment covered by the Civil Service merit system of the City and County of San Francisco (Needs further discussion as this last part of the sentence may belong with a separate component specific to nepotism and favoritism).*

B. Adverse Employment Actions

Actions complained about may include, but are not limited to the following: denial of employment, denial of training, denial of promotion, denial of reasonable accommodation, termination, lay off, constructive discharge, demotion, disciplinary action, harassment, work assignment, sexual harassment, or other employment related actions.

V. DELEGATION OF RESPONSIBILITIES; CERTIFICATION OF STANDARDS

The Human Resources Director may delegate the responsibility for investigating allegations of discrimination to personnel who are competent to conduct such investigations. This delegation will be done in *concurrence/consultation (Request advice from City Attorney on which would be more appropriate to use.)* with the affected departmental appointing officers. Consideration will be given toward minimizing the impact on departmental operational workloads. The assignment of departmental staff for this purpose will be determined on a case-by-case basis. Subject to the approval of the Civil Service Commission, the Human Resources Director shall establish standards of competency for individuals who conduct investigations to enable investigators to comply with the standards. *(NOTE: Vickie Clayton suggests that "the authority to 'resolve' complaints be removed from this delegation. She also suggests that if it is determined that formal 'certification' of competency is desirable, the standards for such certification be set forth in the Rule and approved by the Civil Service Commission.")*

(NOTE: AT END OF THIS SECTION IS A DRAFT OF THE CERTIFICATION STANDARDS)

VI. DEFERRAL OF COMPLAINTS

A. Nothing in the Rules of the Civil Service Commission or in these Procedures precludes an individual's right to file the same or similar complaint, or with any state or federal regulatory agency, or to litigate for relief (*external relief*), or until all employment discrimination complaint matters are centralized, under any approved city department, board, or commission discrimination complaint process (*internal relief*).

B. If a complaint of discrimination filed under these procedures is also filed with another enforcement agency or administrative procedure, the Human Resources Director may in his or her own judgment, determine that the investigation of the complaint be deferred to the other procedure. The Human Resources Director's deferral may include a grievance procedure for resolving discrimination complaints contained in the Memorandum of Understanding of the complainant's employee's organization. The Human Resources Director will notify Department heads, complainant and the accused (if there is an accused person) in writing of the deferral and reasons thereof. Other investigative procedures include approved departmental complaint investigation processes, the U.S. Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or other similar regulatory agency.

C. The Human Resources Director may offer the complainant, the opportunity to select one of the investigative procedures available within the City and County. Once the procedure is selected,

the decision shall not be reversed. If the complainant does not select one of the investigative procedures, the Director shall consult with the affected department and shall select the investigative procedure. The determination by the Human Resources Director to defer the investigation of a discrimination complaint to another procedure shall be made on a case-by case basis.

D. Complaints filed against the Director of Human Resources shall be filed with the Civil Service Commission. The Civil Service Commission may defer the investigation to an approved department that has met the certification standards or to the Commission of Human Rights for investigation.

E. When a charge of discrimination filed under Civil Service Commission rules is also under litigation or an element of litigation, procedures under the Civil Service Commission Rules shall cease, and the matter shall be deferred to the courts.

(NEW)

F. A decision to defer investigation to an external agency or due to ligations shall not preclude an internal investigation from beginning or continuing an investigation of a complaint and taking any appropriate action in regard to a complaint.

G. Pursuant to Section 16.9-25 of the San Francisco Administrative Code, all sexual harassment complaints and investigations will be handled by the Office of Sexual Harassment Prevention, under the direction of the Department of Human Resources

VI. DEFERRAL OF COMPLAINTS

A. Nothing in the Rules of the Civil Service Commission or in these Procedures precludes an individual's right to file the same or similar complaint, under any approved city department, board, or commission discrimination complaint process, or with any state or federal regulatory agency, or to litigate for relief.

B. If a complaint of discrimination filed under these procedures is also filed with another enforcement agency or administrative procedure, the Human Resources Director may in his or her own judgment, determine that the investigation of the complaint be deferred to the other procedure. The Human Resources Director's deferral may include a grievance procedure for resolving discrimination complaints contained in the Memorandum of Understanding of the complainant's employee organization. The Human Resources Director will notify in writing of the deferral and reasons thereof. Other investigative procedures include approved departmental complaint investigation processes, the U.S. Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or other similar regulatory agency.

C. The Human Resources Director may offer the complainant the opportunity to select one of the investigative procedures available within the City and County. Once the procedure is selected, the decision shall not be reversed. If the complainant does not select one of the investigative procedures, the Director shall consult with the affected department and shall select the investigative procedure. The determination by the Human Resources Director to defer the investigation of a discrimination complaint to another procedure shall be made on a case-by-case basis.

D. Complaints filed against the Director of Human Resources shall be filed with the Civil Service Commission. The Civil Service Commission shall determine method of investigation, including deferring to an appropriate department for investigation.

E. When a charge of discrimination filed under Civil Service Commission Rules is also the subject or element of litigation, procedures under the Civil Service Commission Rules shall cease and the matter shall be deferred to the courts. *A decision to defer investigation pursuant to this section shall not preclude a department from beginning or continuing investigation of a complaint and taking any appropriate action in regard to a complaint (Suggestion by Vickie Clayton).*

VII. FILING A COMPLAINT OF DISCRIMINATION

A complaint of discrimination under these procedures shall consist of a *statement* by the employee or applicant specifying those facts and reasons which support the charge. The *statement* of complaint must clearly state the basis upon which the charge of discrimination is filed.

VII. FILING A COMPLAINT OF DISCRIMINATION

A complaint of discrimination under these Procedures shall be in writing and shall consist of a letter signed by the employee or applicant to the Human Resources Director specifying those facts and reasons which support the charge. The letter of complaint must clearly state the basis upon which the charge of discrimination is filed and the specific adverse action about which the employee or applicant is complaining, *and relief requested. (Suggested by Vickie Clayton).*

NEW SECTION: REPORTING ALL DISCRIMINATION COMPLAINTS

All complaints of discrimination are to be reported immediately to the Department of Human Resources. The Human Resources Director or designee shall make determination if the investigation is to be deferred. Once an investigation has begun, the approved Department shall report the progress of all matters on a quarterly basis.

All sexual harassment reporting shall comply with Section 16.9-25 of the San Francisco Administrative Code.

VIII. FILING DEADLINE REQUIREMENT

All complaints must be filed, as specified above, within *one (1) year* of the alleged discriminatory action.

VIII. FILING DEADLINE REQUIREMENT

A. All complaints must be filed, as specified above, within thirty (30) calendar days of the alleged discriminatory action, or within thirty (30) calendar days of the date the complainant should have been aware of the alleged violation.

B. If a complaint is filed under other investigative procedures as described in Section VI. (B), the filing deadlines of the other procedures shall apply.

IX. BURDENS OF PROOF *(Possible place this section in a different location to shorten these procedures)*

The complainant bears the burden of proof to establish a finding of discrimination, as follows:

A. Disparate Treatment: Generally, the order of proof in establishing discrimination in a complaint of disparate treatment is:

1. The complainant is a qualified individual and is a member of a protected group;
2. The employer knew or should have known of this opposition or participation;
3. Persons not in complainants' protected group were treated differently;
4. The department cannot provide a legitimate business reason, or the Department's rationale is pretextual.

B. Sexual Harassment: to establish discrimination in a sexual harassment case a complaint must show that unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature is either:

1) Quid Pro Quo:

- a) is made a term or condition of employment, or
- b) submission to or rejection of such conduct is used as a basis for employment decisions affecting the complainant, **or**

2) Hostile Work Environment

- a) such conduct has the purpose or effect of unreasonably interfering with an employee's work performance, or
- b) creating an intimidating, hostile or offensive working environment.

B. Sexual Harassment: The order of proof in establishing discrimination in a complaint of sexual harassment is:

1. complainant was subjected to unwelcome physical advances, comments of a sexual nature or sexually harassing conduct that is so severe or pervasive as to create a hostile, intimidating, offensive work environment;
2. the terms/conditions or environment of complainant's employment were adversely affected as a result;
3. the conduct was by a supervisor; if by a co-worker or non-employee, employer knew or should have known of the behavior at issue and fails to take immediate and appropriate corrective action;
4. employer did not have a legitimate, nondiscriminatory reason for the events alleged, or employer's articulated reason was pretextual.

C. Reasonable Accommodation: To establish a violation on reasonable accommodation, the evidence must show the following order of proof:

1. Complainant made employer aware that he or she belongs to a protected group;

2. Complainant requested accommodation and was denied;
3. There was not a legitimate, nondiscriminatory reason for the employment decision, or employer's reasons were pretextual.
4. Employer did not attempt to or could have reasonably accommodated without undue hardship.

D. Retaliation: In order to establish a violation on a retaliation issue, the evidence must show the following order of proof:

1. Complainant opposed any practice made unlawful by the Civil Service Commission Rule 3 or participated in activity pursuant to this Rule or these procedures;
2. The employer knew or should have known of this opposition or participation;
3. An adverse action, *by a superior or co-worker*, was taken against complainant subsequent to the protected Equal Employment Opportunity (EEO) action.
4. There was a causal connection between the opposition or participation and the employment decision;
5. There was not a legitimate, nondiscriminatory reason for the employment action or employer's articulated reason was pretextual.

D. Retaliation: In order to establish a violation on a retaliation issue, the evidence must show the following order of proof:

1. complainant opposed any practice made unlawful by this Civil Service Commission Rule 3 or participated in activity pursuant to this Rule or these procedures;
2. the employer knew or should have known of this opposition or participation;
3. an adverse action was taken against complainant subsequent to the protected Equal Employment Opportunity (EEO) action;
4. there was a causal connection between the opposition or participation and the employment decision;
5. there was not a legitimate, nondiscriminatory reason for the employment action or employer's articulated reason was pretextual.

(Request City Attorney suggest appropriate language for Sections E and F)

- E. Favoritism: To establish a violation on favoritism, the evidence must show the following order of proof: (*Suggestion by Vickie Clayton to revise Nepotism/Favoritism definition to conform to the "otherwise prohibited" requirement.*)
1. complainant identifies an employment decision/action that occurred within the time limit established in this rule and the employment decision/action benefited another employee;
 2. complainant demonstrates that he/she was eligible for the employment decision/action, and if requested, had communicated interest to be considered for the employment decision/action; and was adversely affected;
 3. complainant demonstrates that the employee who benefited did so clearly as a result of favoritism and not as a result of merit; complainant must be able to articulate the specific prohibited factors that were applied which adversely affected him/her;
 4. department is unable to provide a legitimate business reason for its decision/action, or the department's rationale is pretextual.
- F. Nepotism: In order to establish a violation in a charge of nepotism, the evidence must show the following order of proof:
1. complainant identifies an appointment that occurred within the time limit established in this rule;
 2. complainant demonstrates that he/she was eligible for the appointment, and if requested, had communicated interest in the appointment; was qualified for the appointment; and was adversely affected.
 3. complainant can demonstrate that the appointment was made to an individual who is related to the supervisor to the third degree by blood, marriage, or domestic relationship;
 4. department cannot articulate a legitimate business reason for its appointment decision, or the reason is pretextual.

X. ALTERNATIVE RESOLUTION OF COMPLAINT

The Human Resources Director or designee shall *immediately when given notification* of a complaint make every attempt to resolve the complaint of employment discrimination through an alternative resolution method. The Human Resources Director or designee will contact both parties to determine if resolution of the complaint is possible. The Human Resources Director or designee shall recruit and maintain a pool of mediators who are trained and certified in mediation, alternative dispute resolution and conciliation. Trained mediators shall mediate a settlement where possible. Such attempts shall not imply any determination or concession by either party with regard to the merit of the charges. *The investigatory procedures may be tolled for up to 20 days during the attempt to resolve the complaint through alternative resolutions means.* The

alternative resolution may be offered at any time during the investigation of a complaint.

Successful resolutions shall result in written agreement signed by both parties. Copy of this agreement shall be submitted to the Human Resources Director for review within ten (10) business days from the date that resolution is reached and returned with ten (10) business days to the parties. The settlement agreement shall be implemented as soon as practicable. (*Vicki's questions all still exist.*)

X. INFORMAL RESOLUTION OF COMPLAINT

The Human Resources Director or designee shall, within ten (10) business days of written notification to the department being charged, make every attempt to resolve the complaint of employment discrimination informally. The Human Resources Director shall recruit and maintain a pool of mediators who are trained and certified in mediation, alternative dispute resolution and conciliation. The Human Resources Director or designee will contact both parties to determine if resolution of the complaint is possible. The trained mediators shall serve as a means to mediate an amicable settlement where possible. Such attempts shall not imply any determination or concession by either party with regard to the merit of the charges. Successful resolutions shall result in written agreement signed by both parties. Copy of this agreement shall be submitted to the Human Resources Director for review within ten (10) business days from the date that resolution is reached and returned within ten (10) business days to the parties. The settlement agreement shall be implemented as soon as practicable. (*According to Vickie Clayton, this section raises the following questions: Who are the "parties" for purposes of mediation? Who enforces the agreement? Who resolves disputes resulting from alleged failure to conform to the agreement?*)

XI. INVESTIGATIVE PROCEDURE

- A. The Human Resources Director shall direct that complaints are resolved in the shortest time possible, and to that end, the Director will direct that the process *to resolve complaints is started immediately. The investigatory procedures may be tolled for up to 20 days during the attempt to resolve the complaint through alternative resolution.* If both parties are unable to reach an alternative resolution of a complaint, the Human Resources Director shall direct an investigation of the allegations of discrimination to continue.
- B. *Investigations shall include but not be limited to interviews with complainant, alleged accused, co-workers and other witnesses, supervisors/managers of both the complainant and the alleged accused, a review of both the complainant and alleged accused's personnel files and any other documentary evidence or departmental information pertaining to this incident and such other activity as may be necessary to obtain information pertinent to the specifics of the charges.*
- C. *The investigation will be completed within ninety (90) calendar days.*
- F. *Exceptions to the time line will only be granted when the request for an extension is in writing and filed with the Director of Human Resources and a copy is sent to the complainant, the department involved, and to the alleged accused. The request shall state*

the reason for the delay (or that what circumstances were unforeseen at the time the investigation was initiated.). A 20-day extension is automatically granted when all parties agree to participate in an alternative resolution. The Director of Human Resources may grant delays for up to thirty (30) days.

- A. If both parties are unable to reach an informal resolution of a complaint, the Human Resources Director shall direct an investigation of the allegations of discrimination. The Human Resources Director shall direct that complaints are resolved in the shortest time possible, and, to that end, the Director will direct that the process to resolve complaints is started within thirty (30) business days of receiving such complaints.
- B. Within five (5) business days of receipt of a complaint by an investigator, the investigator shall review the charge for timeliness and jurisdiction and shall contact the complainant for purposes of scheduling an initial intake interview and completion of the appropriate EEO complaint form.
- C. A copy of the complaint and request for response and information shall be forwarded to the department within thirty (30) calendar days. The department will have thirty (30) calendar days to respond.
- D. Upon receipt of the department's response to the complaint, the investigator shall conduct an investigation of the charges. Such investigative authority shall include the review of relevant documents, interviewing individuals and such other activity as may be necessary to obtain information pertinent to the specifics of the charges.
- E. Unless delayed by circumstances beyond the control of the investigator, the investigation will be completed within ninety (90) calendar days. If an investigation cannot be completed within the ninety (90) days, the investigator will report to the Human Resources Director the status of the investigation and the reason for the delay.
- F. Extensions may be requested for any of the deadlines cited above, shall be requested in writing from the Human Resources Directory and will be considered and granted on a case-by-case basis.

XII. INVESTIGATOR'S REPORT

Upon completion of the investigation, the investigator's shall issue a report a summary of the findings and recommendations supported by the investigation. Reports issued by a decentralized investigative unit must be approved by the department's appointing officer or authorized designee. This report will be given to the Human Resources Director.

XII. STAFF REPORT

Upon completion of the investigation, the Human Resources Director or designee shall, within thirty (30) calendar days, complete an investigative report with findings and recommendations supported by the investigation. A staff report issued by decentralized investigative unit must be approved by the department's appointing officer or authorized designee. The action of the Human Resources Directory shall be communicated to the complainant and the department.

XIII. ACTION BY THE HUMAN RESOURCES DIRECTOR

1) Final Determination: The Human Resources Director or designee shall, within fifteen (15) calendar days of receiving the investigator's report, issue a final determination with findings of facts (cause no cause) as to the alleged discriminatory behavior and recommendations as to desired corrective action, if any, to be taken and send a copy in writing to the complainant, the

department involved, and alleged accused; or

If Human Resources Director determines that a hearing is warranted, his or her staff shall schedule a full administrative hearing within 60 days.

2) Hearings: (NEW)

If the Human Resources Director determines that a hearing is necessary he or she shall appoint a Hearing Officer. The complainant, the department involved, or the alleged accused may request a thirty (30) day extension. All parties shall be given at least ten (10) business day's notice of the date, time, and location of the hearing. All parties shall have the right to representation at the hearing, to call a reasonable number of witnesses, and to present arguments to the Hearing Officer. Hearing Officers shall meet the following criteria:

a) Hearing Officer should have at least five (5) years of Equal Employment Opportunity experience which could include:

- experience as a Hearing Officer (three years)*
- experience with the Equal Employment Opportunity investigation process*
- experience as a mediator (at least three years)*
- legal background in discrimination matters*

b) Education should include at least two years in a related field (IE: women's studies, social work, human resources, legal.) A graduate level degree is not required, though it would be considered part of the five-year experience.

c) Skills that the Hearing Officer must have include:

- time management skills*
- good written and verbal communication skills*

d) Hearing Officers will go through a screening process prior to hearing a case so no former department employee would hear complaints from that department.

3) Decision of the Hearing Officer

- A court reporter, if request, may attend and transcribe all Hearing Officer's hearings.*
- Hearing Officer has the option of a bench recommendation or taking additional time to decide. If the latter is chosen, a written recommendation must be provided to all parties within ten (10) business days of the conclusion of the hearing.*
- Written transcripts of a bench recommendation may be requested by the complainant and/or the respondent.*

- *If a court reported or a written transcript is requested, it will be paid for by the requesting party.*

4) Final Determination

The Human Resources Director or designee shall, within ten (10) calendar days of receiving the recommendation of the hearing officer, issue a final determination as to the alleged discriminatory behavior and a recommendation as to desired corrective action, if any, to be taken and send a copy in writing to the complainant, the department involved, and to the alleged accused. The Human Resource Directors' determination shall be final unless it is appealed to the Civil Service Commission.

XIII. HUMAN RESOURCES DIRECTOR'S ACTION

All investigative reports shall be submitted to the Human Resources Director. The Human Resources Director shall review the complaint, the department's response, and the investigative report. The Human Resources Director shall issue a determination to the complainant and department within five (5) calendar days. The determination of the Human Resources Director shall be final unless it is appealed to the Civil Service Commission.

XIV. APPEAL PROCEDURES

A. *The complaint, the department involved, or alleged accused may appeal the decision of the Human Resources Director to the Civil Service Commission within twenty (20) calendar days of the postmark mailing date of the director's decision by submitting such appeal in writing and specifying the reasons therefore.*

B. Upon notification by the Civil Service Commission that an appeal has been filed, the Human Resources Director shall submit to the CSC for its review copies of the investigative report and the director's final determination within five business days.

C. The appeal will be placed on the calendar of the next Civil Service Commission meeting to be heard. When an administrative hearing has taken place there, will be no additional evidence allowed unless it could not, with reasonable diligence, have been presented as part of the hearing. The Civil Service Commission will render a decision. The Civil Service Commission's decision is final.

XIV. APPEAL PROCEDURES

A. Either the complainant or the department may appeal the decision of the Human Resources Director to the Civil Service Commission within ten (10 or 30) business days (*10 requires that the procedure be changed; 30 requires the rule to be changed*) of the postmark mailing date of the Director's decision by submitting such appeal in writing and specifying the reasons therefore.

B. Upon notification by the Civil Service Commission that an appeal has been filed, the Human Resources Director shall submit to the Commission for its review copies of the staff's investigative report and the

Director's finding. (*Vickie Clayton suggests that "the Commission determine in its Rules or Procedures exactly how*

much, if any, testimony or additional documentation it is willing to hear on appeal.”)

XV. REVIEW PANEL (omit)

XV. REVIEW PANEL

A. When staff’s investigative report of either the Department of Human Resources or a city department is appealed, the appeal will be submitted to the Civil Service Commission. The Commission shall refer the complaints to the Human Resources Director to process for hearing to the Discrimination Complaint Review Panel. The Review Panel shall consist of *three panel members chosen from an available pool of ten, selected by the Civil Service Commission and the Director of Human Resources. When a full Discrimination Complaint Review Panel is convened, two (2) Panel members shall be designated by the Civil Service Commission, and one (1) Panel member shall be designated by the Human Resources Director.* The Review Panel may include subject matter experts from the Human Rights Commission, the Commission on the Status of Women, the Department of Human Resources, other city departments, or other organizations.

B. Review Panel will convene to review appeals. If the Review Panel determines that a hearing is warranted, both parties shall be given at least ten (10) business days notice of the date, time, and location of the hearing. The complainant and the department shall have the right to representation at the hearing, to call a reasonable number of witnesses, and to present arguments to the Panel. The Review Panel shall convene within twenty (20) days of notification and shall issue written findings to the Civil Service Commission within ten (10) business days of the conclusion of the hearing.

C. If the Review Panel’s recommendations determine that a hearing before the Civil Service Commission is warranted, the Executive Officer shall schedule a hearing as soon as practicable and notify the complainant and department. The Civil Service Commission shall review the Review Panel findings and recommendations and will render decision. The Civil Service Commission’s decision is final. *(Question by ERD whether there will be two hearings?) (Vickie Clayton also suggests “that no additional evidence be allowed unless it could not, with reasonable diligence, have been presented as part of the investigation... and limiting argument to written statements or very short oral presentations.”)*

XVI. REPORTING REQUIREMENTS

A. The Human Resources Director shall, on a quarterly basis, report to the Human Rights Commission, the Commission on the Status of Women, and Civil Service Commission on the number of complaints filed, the bases of the complaints, the issues, and the departments that were charged. The report shall also include information on the dispositions of complaints that are concluded and the status of complaints that are pending.

B: Office of Sexual Harassment: The office shall maintain all records in compliance with Administrative Code 16.8-25.

C. The Human Resources Director shall report annually to the Mayor, the Board of Supervisors, the Human Rights Commission, and the Commission on the Status of Women on the number of claims of sexual harassment filed, including information on the number of claims pending and the departments in which claims have been filed. Formerly

XVII. ADOPTION AND AMENDMENTS TO PROCEDURES

The Human Resources Director may amend these procedures, subject to the approval of the Civil Service Commission. Any such amendment shall be posted for a minimum of seven (7) calendar days prior to adoption. Upon adoption, changes shall be in effect. No change in the procedures shall affect a case which is pending resolution.

-DRAFT-
INVESTIGATOR STANDARDS

This describes the certification process and standards which outline the qualifications necessary before performing an employment discrimination investigation and resolving employment discrimination complaints under civil rights statutes enforced by the City and County of San Francisco. Proposition L states that "the Director may delegate the responsibility for reviewing, investigating and resolving allegations of discrimination to personnel." In so doing, employees and unions express concern that department staff be competent to conduct investigations.

As such, the following are proposed criteria for certification of an individual to investigate employment discrimination complaints:

- ▶ when an employee is qualified to perform the duties and responsibilities of a 1233 Affirmative Action Specialist (IE an employee with prior experience or is performing those duties), or any person who meets the minimum qualifications of a 1233 or a 1231 Assistant Manager (for Affirmative Action) (*minimum qualifications of 1233 position: see attached*); and
- ▶ employee has a minimum of 100 hours of supervised investigative experience. (Supervision by a certified investigator with at least three years of investigation experience.)
- ▶ employee passes a investigation exam
- ▶ the employee has participated in the 40 hours of educational training to conduct discrimination investigations. (Training may mean attending an external employment discrimination training session, or undergoing a training session conducted by an EEO unit on investigations which includes a minimum of two hours each in the following areas ADA, Race, Gender Discrimination, Sex and Sexual Harassment, Age, Retaliation and mediation or alternative dispute resolution).
- ▶ employee has knowledge of intergroup relations and problems of protected groups such as ethnic minorities, women, disability, senior citizens, etc.; investigation and interviewing techniques; current labor and employment law, methods of compiling and presenting data, mediation as alternative dispute resolution and Federal civil rights statutes; California Fair Employment and Housing laws and Department of Human Resources and Civil Service Rules, policies and procedures and rules of evidence.
- ▶ employee has ability to interpret and apply civil rights laws and rules and regulations of the City and County of San Francisco; analyze data; speak and write reports effectively; deal tactfully, creatively and effectively with sensitive problems of civil rights law enforcement; analyze situations accurately and take effective action; establish and maintain cooperative relationships with those individuals contacted in the work environment and conduct

difficult and involved investigations. Includes the ability to recognize and differentiate standards and burdens of proof, to analyze and weigh evidence, interpret and apply laws/rules to factual situations and connect and see overall vision.

There will be a “grand fathering in” of current 1233 and 1231 personnel who have performed 2000 hours or more of EEO investigations (including an investigation in each of the following areas ADA, Race, Gender Discrimination and Sexual Harassment, Age and Retaliation) and meets the last three certification standards and the approval of Human Resources Director (in advice with a representative of the Human Rights Commission and the Commission on the Status of Women).

PROPOSED AMENDMENTS TO SEXUAL HARASSMENT CODE

San Francisco Administrative Code Section 16.9-24

SEC. 16.9-25. PROHIBITING SEXUAL HARASSMENT OF CITY EMPLOYEES; ESTABLISHING A COMPLAINT PROCEDURE AND OFFICE OF OFFICE OF SEXUAL HARASSMENT PREVENTION; PROVIDING FOR REMEDIES FOR PERSONS WHO HAVE BEEN FOUND TO BE VICTIMS OF SEXUAL HARASSMENT INCLUDING THE SETTING ASIDE OF DISCIPLINARY ACTION AGAINST THESE PERSONS; REQUIRING THE IMPOSITION OF DISCIPLINARY ACTION AGAINST PERSONS VIOLATING THIS SECTION; REQUIRING DISTRIBUTION OF THE POLICY; INTERPRETATION.

(a) Sexual harassment of a City employee or applicant for employment by a City official or employee is prohibited.

(b) Behavior which constitutes sexual harassment by City officials and employees includes, but is not limited to:

- (1) Verbal harassment, e.g., epithets, derogatory comments or slurs;
- (2) Physical harassment, e.g., assault, impeding or blocking movement, gestures, or any physical interference with normal work or movement;
- (3) Visual forms of harassment, e.g., derogatory posters, letters, poems, graffiti, cartoons or drawings; or
- (4) Requests for sexual favors or unwanted sexual advances; when the foregoing behavior unreasonably interferes with work performance, creates an intimidating, hostile or offensive working environment, influences or affects the career, salary, working conditions, job, or other aspects of career development of an employee or prospective employees, or is an explicit or implicit term or condition of employment.

© For the purpose of this Section, the following behavior by City officials and supervisory employees also constitutes sexual harassment:

- (1) Failing to take corrective action when the officials or supervisory employees know, or reasonably should know, that an employee in the line of supervision of the officials or supervisory employees is being subjected to prohibited sexual harassment on the job by anyone; or
- (2) Retaliation against an employee or applicant for employment who complained of sexual harassment, or who testified on behalf of one who made a complaint, or who assisted or participated in any manner on behalf of a complainant in an investigation, proceeding or hearing conducted under this Section.

(NEW) An Office of Sexual Harassment Prevention shall be created under the Department of Human Resources in order to maintain a sexual harassment free workplace environment. The office shall emphasis prevention and alternative resolutions whenever possible and shall also handle all formal investigations for internal complaints on sexual harassment pursuant to Civil Service Commission Rule three (3). The office shall also assist all supervisors and managers with the handling of informal or alternative resolutions of reports of sexual harassment and shall keep records of all reports of sexual harassment as described below.

(d) Any supervisor, manager, human resources personnel or public official who receives a complaint about sexual harassment, or who is otherwise aware of, or learns of sexual harassment in the workplace, whether or not anyone complains about such harassment, must immediately send notification (identified as "confidential") to:

*Office of Sexual Harassment Prevention (to be sent by confidential fax) and,
Department Head (where a sexual harassment situation arose).*

1) The notification shall be in writing by the person who received the information regarding a sexual harassment situation and will be marked "confidential." The notification will contain the name, department, and phone number of the complainant (if known), the name, department, and phone number of the person giving the notification, and the date.

2) Any city official, supervisor or manager who is aware or reasonably should be aware of sexually harassing conduct by another employee (whether or not anyone complains about such harassment) but fails to report that conduct as required in this policy, may be subject to discipline.

3) Within five working days after receiving notice of a complaint, the Civil Service Commission Office of Sexual Harassment Prevention shall report that complaint to the Commission on the Status of Women. The Civil Service Commission Office of Sexual Harassment Prevention's reports to the Commission on the Status of Women shall not contain information identifying the parties involved in the events giving rise to the complaint, but shall include all other relevant details. The Civil Service Commission Office of Sexual Harassment Prevention shall report the outcome of each complaint to the Commission on the Status of Women promptly after the complaint is resolved. The Civil Service Commission Office of Sexual Harassment Prevention shall annually report to the Board of Supervisors, the Mayor, the Human Rights Commission and the Commission on the Status of Women the number of claims filed, the number of claims pending, the departments in which claims have been filed and such other information the Civil Service Commission Office of Sexual Harassment Prevention determines necessary regarding problems in enforcement under this section.

(e) The discrimination complaint procedure established by the Civil Service Commission pursuant to ~~Section 3.661© of the Charter~~ *Rule three (3)* shall be used to review and resolve allegations of sexual harassment. The determination reached under the Civil Service Commission procedures shall be final and shall forthwith be enforced by every employee and appointing officer.

(f) During any hearing on a complaint of sexual harassment, evidence of the sexual conduct of the complainant offered to attack the credibility of the complainant shall be permitted only as provided in the Civil Service Commission Hearing Procedures and with the express

approval of the Civil Service Hearing Panel. (?????? QUERY WHAT IS THIS????)

(g) Upon a finding that a City official or employee has engaged in prohibited sexual harassment as defined herein against a City employee or applicant for employment, the City official or employee shall receive disciplinary action up to and including demotion or dismissal in accordance with the applicable provisions in the Charter. A statement of those findings, of the disciplinary action taken, and of any final determination of subsequent acts of sexual harassment shall be made a part of the employee's personnel file and shall be included in the employee's performance evaluation.

(h) Whenever a final determination is made that an action taken against a City employee, such as but not limited to, a reassignment, transfer, termination, disciplinary action or demotion, constitutes sexual harassment, the responsible appointing officer in the subject department shall set aside that action and provide a make whole remedy to the complainant including but not limited to reinstatement of all benefits, seniority and back pay. After a final determination is made that sexual harassment did occur, the appointing officer in the subject department shall provide a written notification of compliance with the requirements of this Section to the ~~General Manager,~~ *Personnel Office of Sexual Harassment Prevention.*

(I) Prevention is the best tool for the elimination of sexual harassment. All City and County commissions, departments, boards and agencies shall provide to each of their supervisory employees a copy of this ordinance with a written explanation of the Civil Service procedure for filing a complaint for violation thereof. Each appointing officer shall require his or her supervisory personnel to instruct all employees under their supervision of the contents of this ordinance and of the Civil Service procedures for filing a complaint for violation thereof, and shall adopt ~~a specific departmental~~ *one standard sexual harassment* policy delineating that sexual harassment will not be tolerated and shall provide to or acquire for its supervisory personnel a training program designed to educate and thereby prevent sexual harassment.

(j) This policy shall be construed in a manner consistent with the right of free speech, association and privacy.

(k) The offices of the Human Rights Commission and the Commission on the Status of Women shall be available to provide assistance upon request to any employee, applicant for employment, or City department wherever appropriate.

(l) Nothing in this Section is intended to limit the power of a department head to discipline a department employee found guilty or responsible for sexual harassment or retaliation.
(Amended by Ord. 213-86, App. 6/13/86; Ord. 271-89, App. 7/28/89)

(m) *Consensual romantic relationships between a supervisor/manager and a subordinate are not prohibited by this section. They do, however, create a potential conflict of interest. Therefore, any supervisor/manager or public official who has such a relationship with another city employee over whom he or she has any supervisory authority must report this fact to his or her supervisor.*

(n) Any employee or applicant for employment who:

- believes he or she is the subject of sexual harassment, or*
- is aware of a sexually hostile or offensive work environment, or other sexual harassment, or*
- believes he or she has been retaliated against for making a good faith complaint or report of sexual harassment, or for participating or aiding in an investigation of sexual harassment*

should immediately report the incident to the Office of Sexual Harassment Prevention. Employees may also report any incident to any supervisor or manager, Equal Employment Opportunity Specialist or Human Resources personnel. The formal complaint must be a statement by the employee specifying the facts which support the discriminatory charge. This statement may be verbal or in writing.

(o) Complaints of sexual harassment must be filed within one (1) year of the alleged discriminatory action.

(p) The Office of Sexual Harassment Prevention will, in every incident, make a determination if a formal investigation is required or if further preventive measures or an alternative resolution is possible. The Office of Sexual Harassment Prevention will investigate all formal sexual harassment complaints. The investigation will begin immediately and will be completed within ninety (90) calendar days, unless written notification of an extension is required.

(q) To the extent possible the reporting and investigation of all sexual harassment complaints will be kept confidential. The City and County of San Francisco cannot make an absolute guarantee that the information provided regarding a possible sexual harassment offense will remain completely confidential. The City and County of San Francisco can assure individuals that it will keep the information, including complainants' identity, private to the greatest extent possible, taking into account the rights of the accused.

*(r) An individual may also file an anonymous report (which is not a formal complaint) with the Office of Sexual Harassment Prevention. When the office learns, from whatever source, of sexual harassment (potential or actual), the office is authorized, in the absence of a **formal complaint**, to take any action deemed appropriate. These actions may include but are not limited to training, mediation, alternative resolution, assessment of workplace environment, team building, communication training, site visits or a full investigation.*

(s) Nothing in this policy is intended to affect the right of any person to make a charge of discrimination at any state or federal agency with jurisdiction over such claims, raise a grievance under a collective bargaining agreement, or consult a private attorney.
Sexual Harassment Information Tracking System

(i) The Office of Sexual Harassment Prevention will maintain records of all reports and complaints of sexual harassment. Two types of files will be maintained:

1) Formal Complaint File. A formal complaint file will be maintained by the Office of Sexual Harassment Prevention. This file will contain: the name of the complainant, the department involved, complainants' title/classification, gender, ethnicity, work location, basis of complaint, the name of the alleged party or parties involved, those parties' gender, ethnicity, title/classification, work location, the hours spent on resolving the complaint, the status of the complaints that are pending, resolution (if any), and departmental action taken, all formal review documents, such as the complaint form, the investigation report, any record of appeal, the result of the appeal, and a record of correspondence notifying the complainant, the department involved and the alleged harasser of actions taken, recommendations and the progress of the complaint. This information will be marked "confidential."

2) Report Files. Files will be maintained by the Office of Sexual Harassment Prevention on all reports of sexual harassment, whether they result in a formal investigation or not. These files will be maintained by the department and section involved and will include a summary of the report and the resolution of the problem, including any education/training the individuals or other department personnel received as a result of the report. This information will be marked "confidential."

3) Access to Records. The Office of Sexual Harassment Prevention records are considered "confidential" for purposes of access and will be maintained in a secure location. Other City and County Officials may have access to the formal complaint records if the disclosure is relevant and necessary in the ordinary course of the performance of their official duties and is related to the purpose for which the information was acquired. Access may also be given in response to a subpoena, court order or other compulsory legal processes. Before disclosure, The Office of Sexual Harassment Prevention should reasonably attempt to notify the individual to whom the record pertains, if the notification is not prohibited by law.

4) Promotion/Transfer Tracking: The personnel file must be reviewed by the Appointing Officer to aid in decisions regarding promotions, transfers or hiring.

5) Records Retention: All the Office of Sexual Harassment Prevention files will be retained until five years after departure of the accused; provided there has been no further report or complaint concerning the conduct of the alleged harasser for five (5) continuous years, from the date of the last report or complaint, the file will be destroyed.

6) Commission on the Status of Women: On a quarterly basis, the following sexual harassment complaint information shall be given to the Commission on the Status of Women: the department involved, complainant's title/classification, gender, ethnicity, work location, basis of complaint, the parties' gender, ethnicity, title/classification, work location, the hours spent on resolving the complaint by all relevant employees, the status of the complaints that are pending, resolution (if any), and departmental action taken, without identifying names of any of the parties.

TRAINING CONSIDERATIONS AND MODELS

I. WHO IS TRAINED:

Line staff, supervisors/managers/department heads, investigators, individuals responsible for dispute resolution taken seriously.

II. ATTENDANCE:

Mandatory

III. FREQUENCY OF TRAINING

After initial training, follow-up training be provided annually.

IV. DURATION OF TRAINING

Three hour training sessions for employees; 4 hour training sessions for managers and supervisors; full day training session (without distractions) for department heads; additional full day training session for investigators or persons involved in dispute resolution.

V. QUALITY CONTROL/CONSISTENCY

Develop uniform training manual detailing training content, methods, models with adaptations for department needs, special issues, standardized training (with defined options for tailoring to particular departments) helps to ensure uniformity and consistency of information, provide train-the-trainer sessions for all trainers, provide extensive training for all persons involved in investigation of claims or dispute resolution, develop and use evaluation instrument to be completed by each training participant, confidential survey of staff to see if sexual harassment stopped - six months following complaint.

VI. PROPOSED TRAINING GOALS

- work environment free of sexual harassment
- elimination of gender bias
- respect
- dignity
- reduce costs of sexual harassment (human, productivity, financial)
- reduce employer liability
- team building

VII. PROPOSED TRAINING OBJECTIVES

- define what harassment is, is not
- clarify standards for appropriate workplace behavior
- review policy & procedures
- address common perception differences, misperceptions, myths
- explain legal issues
- address questions & concerns
- provide forum for discussion
- encourage direct communication
- encourage ongoing communication
- encourage appropriate responses
- skill building
- communicate management support
- heal the workplace
- explain consequences of harassment - workplace disruption, emotional impact to victim, discipline of harasser

VIII. PROPOSED TRAINING APPROACH

- non-blaming
- straight forward/direct
- educational/informational
- practical
- legal
- understandable
- accessible
- credible
- interesting

IX. PROPOSED FORMAT/S

- interactive
- small groups
- group participation in exercises
- multimedia
- introduced by leadership
- role-plays
- demonstrations

X. PROPOSED CORE CONTENT (line staff and managers/supervisors)

- city policy
- legal issues
- definitions
- examples
- perception differences/misperceptions/myths
- behavioral guidelines
- skill building
- healing work environment
- reporting process and avenues
- impact of sexual harassment
- employee roles and responsibilities
- management roles and responsibilities
- confidentiality
- retaliation
- favoritism
- conflicts of interest
- dating co-workers

XII. MANAGEMENT TRAINING INCLUDES ABOVE CORE CONTENT PLUS:

- creating harassment-free work environment
- receiving complaints
- responding to inappropriate behaviors
- role-modeling
- problem-solving situations
- basic investigation
- formal vs. informal
- dealing with retaliations or perceived retaliation
- professional conduct

XIII. PROPOSED TRAINING MODELS

- individual
- groups
- live trainer/s
- video-based
- interactive computer program
- department-specific
- inter-departmental